R. 2L 4411

Feb. 23. 1875

Field J.

Swayne

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~484~~ 195

NICHOLAS P. TRIST, APPELLANT,

VS.

LINUS M. CHILD.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED SEPTEMBER 27, 1873.

Oct. 7. 1874

SUPREME COURT OF THE UNITED STATES.

No. 484.

NICHOLAS P. TRIST, APPELLANT,

VS.

LINUS M. CHILD.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Summons to answer bill of complaint, and return	9	3
Injunction, order, and return	10	3
Order of publication vs. defendant	11	4
Proof of publication	11	4
Pro confesso ordered	12	4
Motion to set aside pro confesso	13	4
Pro confesso ordered set aside	13	5
Appearance of defendant	14	5
Demurrer to bill by defendant	14	5
Demurrer sustained	17	6
Appeal to general term	17	6
Decree of special term sustained	18	7
Consent of defendant to open decree	19	7
Answer of defendant to bill	21	8
Exhibit No. 1 to answer of defendant to bill	52	16
Exhibit No. 2 to answer of defendant to bill	54	16
Exhibit No. 3 to answer of defendant to bill	58	17
Exhibit No. 4 to answer of defendant to bill	60	18
Exhibit No. 5 to answer of defendant to bill	63	19
Exhibit No. 6 to answer of defendant to bill	66	20
Replication to answer	67	20

COMPLAINANT'S TESTIMONY.

Interrogatories for deposition of L. M. Child	69	21
Deposition of L. M. Child	75	22
Exhibit to deposition of L. M. Child	92	26
Exhibit A to deposition of L. M. Child	94	27
Exhibit B to deposition of L. M. Child	96	28

DEFENDANT'S TESTIMONY.

	Original.	Print.
Deposition of P. W. Hitchcock	102	29
Deposition of J. W. Burke	110	32
Deposition of N. P. Trist	113	33
Cause set for hearing at special term	147	41
Cause certified to general term	147	42
Decree of general term	148	42
Appeal from decree of general term, (Supreme Court United States)	149	42
Appeal-bond to Supreme Court United States	150	43
Clerk's certificate	151	43

1 *Bill of complaint.—Filed 25 April,* 1871.

In the supreme court of the District of Columbia the 25th day of April, A. D. 1871.

LINUS M. CHILD
vs.
NICHOLAS P. TRIST.
} 2365. Equity docket 11.

To the justices of the supreme court of the District of Columbia:

The plaintiff complains as follows:

1. He is a resident of Boston, Massachusetts, and brings this suit in his own name, and also as executor of the last will and testament of Linus Child, late of Boston, Mass.

2. The defendant is a resident of Alexandria, Virginia.

2 3. Prior to the 27th day of August, A. D. 1870, the plaintiff was
a partner of the said Linus Child, doing business in said Boston, as attorney and counsellor at law, and had so been for several years.

4. In the latter part of 1868, or the early part of the year 1869, and while the plaintiff was so in partnership with the said Linus Child, the defendant, the said Nicholas P. Trist, employed the said Linus Child, as counsellor at law, to prepare, present, and prosecute a claim against the United States Government for money due him, the said defendant, as "Envoy Extraordinary" in the negotiation of the treaty with the Mexican government known as the Guadolupe-Hidalgo treaty.

5. When the defendant so employed the said Linus Child as aforesaid, represented to him that he was poor and unable to pay any fees in
advance, or even the expenses and disbursements necessary and
3 incumbent upon the prosecution of the claim, but the said Trist
wrote a letter to the said Linus Child, informing him that if he, the said Child, would prepare, present, and prosecute the said claim he (Trist) would pay to him (Child) and there should be his (Child's) in payment for the services rendered, twenty-five per centum of all money that should be allowed him, the said Trist, by the Congress of the United States or paid him by the United States Government on behalf of said claim.

6. Under this agreement and arrangement the said Linus Child made several journeys to Washington, and paid out considerable sums of money and spent much time in and on behalf of the preparation, presentation, and prosecution of the said claim. And the plaintiff, as the partner of said Linus Child, as was agreed and understood, devoted
his time and services to this case jointly with the said Linus
4 Child, it being understood that the said contingent fee of twenty-
five per cent. should be in full payment of the time and services and expenses of both counsellors in this behalf; and the plaintiff made several journeys to Washington, and spent considerable sums of money and a large amount of time in the prosecution of the claim both before as well as after his said father's death; all of which was done openly, fairly, and with the full knowledge and consent of said Trist. The services rendered consisting, besides the preparation of the case, in an open, honorable, and fair presentation of the said claim of the said Trist to the committees and the members of the two houses of Congress, and being in no manner nor respect clandestine or improper.

7. On the 27th day of August, 1870, the said Linus Child died, and since that time the plaintiff has prosecuted the said claim.

5 8. On or about the 20th day of April there was approved an act of Congress for the relief of Nicholas P. Trist, providing for the payment by the United States of a certain sum of money therein named to the said Nicholas P. Trist, the negociator of the treaty of Guadalupe-Hidalgo, to wit, about fourteen thousand dollars.

9. Subsequently to the approval of this act the said Trist has informed the plaintiff that he shall not pay to him either of his own account nor as the representative of said Linus Child the twenty-five per cent. of the said sum so appropriated to him, and that he, the said Trist, will repudiate the agreement heretofore made as aforesaid, although he acknowledges that he made it.

10. The money appropriated by the said act of Congress of Apr. 20, 1871, has not yet been paid to the said Trist, but is still
6 in the Treasury of the United States, and the plaintiff is informed and believes, and so charges, that the said Trist has no other property in this District than this fund, and that he proposes to obtain said money and remove the same from the jurisdiction of this court, and defraud the plaintiff and evade the payment to him either on his own account or as representative of the said Linus Child of the amount due them for their services, expenses, &c., as aforesaid, as determined and fixed by the said Trist as aforesaid.

11. The plaintiff has been advised that he has a lien upon this fund which has been created by the services of the said Linus Child and himself, and it would be unjust and inequitable in the said Trist to withdraw the same from the jurisdiction of this court and evade the payment of what is due the plaintiff.

7

PRAYERS.

The plaintiff therefore prays as follows:

1. That the said Trist, by himself, his agents and attorneys, may be enjoined and restrained from withdrawing said money from the Treasury of the United States until he shall have fully complied with his said agreement.

2. That a decree may pass commanding him to pay to the plaintiff the sum of $5,000.

3. For such further and other relief as, the premises considered, may be deemed just and proper.

4. That the said Nicholas P. Trist may be made a party de-
8 fendant hereto, and by the writ of subpœna compelled to appear, answer, and abide the orders and decrees of this court in the premises.

R. D. MUSSEY,
Solicitor for pl'ff.

The defendant to this bill of complaint is Nicholas P. Trist.

I have carefully read over the above bill, and the matters therein alleged as of my own knowledge are true, and those alleged on information and belief I believe to be true.

LINUS M. CHILD.

Subscribed and sworn to before me this 25th day of April, 1871.
R. J. MEIGS, *Clerk.*
By CHA'S McNAMEE,
Ass't Clerk.

9 *Summons to answer.—Issued Ap'l 25, 1871.*

In the supreme court of the District of Columbia, April 25, 1871.

LINUS M. CHILD, COMPL'T,
against
NICHOLAS P. TRIST, DEF'T.
} No. 2365. Equity docket 11.

The President of the United States to Nicholas P. Trist, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term, to which this writ is returnable, otherwise the bill may be taken for confessed.

Marshal's return.

"Not to be found."

A. SHARP, *Marshal.*

"APRIL 26TH, 1871."

10 *Order for temporary injunction.—Filed Apr. 25, 1871.*

In the supreme court of the District of Columbia, the 25th day of April, 1871,

LINUS M. CHILD
vs.
NICHOLAS P. TRIST.
} 2365. Equity dock. 11.

On reading the bill in this case, and on motion of Mr Mussey, the plaintiff's solicitor, it is ordered that on five days' notice to the defendant the motion for an injunction pendente lite be heard, and that meantime the defendant, his agents and attorneys, be restrained from receiving from the Treasury of the United States the money appropriated to him by the act of Congress, approved April 20th, 1871, entitled "An act for the relief of Nicholas P. Trist, the negociator of the treaty of Guadalupe-Hidalgo."

ARTHUR MAC ARTHUR,
Justice Sup. C't, D. C.

Marshal's return.

"Not t be found.

"A. SHARP, *Marshal.*"

11 *Order of publication vs. def't.—Filed May* 1, 1871.

In the supreme court of the District of Columbia, the first day of May, 1871.

LINUS M. CHILD
vs. } N. 2365. Eq. dock. 11.
NICHOLAS P. TRIST.

On motion of the plaintiff, by Mr. Mussey, his solicitor, it is ordered that defendant cause his appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

ARTHUR MAC ARTHUR,
Justice Sup. C't, D. C.

Proof of publication.—Filed July 20, 1871.

In the supreme court of the District of Columbia, this 20th day of July 1871.

LINUS M. CHILD
vs. } 2365. Equity docket 11.
NICHOLAS P. TRIST.

James O. Ladd, being duly sworn, says that he is superintend-
12 ant and measurer of the "Daily Chronicle," a newspaper pub-
lished in the city of Washington; and that an advertisement, of which the annexed is a copy, appeared in the said paper three times, to wit, on the 5th, 12th, & 19th days of May, A. D. 1871.

JAMES O. LADD, *Sup't.*

Subscribed & sworn to before me this 20th day of July, A. D. 1871.
[SEAL.] JOS. T. K. PLANT,
Notary Public.

Decree pro confesso.—Filed July 22, 1873.

LINUS M. CHILD
vs. } 2365. Eq. dock. 11.
NICHOLAS P. TRIST.

It appearing to the court that the defendant in the above-entitled cause has not appeared, although due service by publication has been had against him, it is, on motion of Mr. Mussey, the plaintiff's solicitor, ordered, adjudged, and decreed that the several matters and things alleged in said plaintiff's bill be taken as confessed against the said defendant.

By the court.

13 *Motion to set aside pro confesso.—Filed July* 27, 1871.

In the supreme court of the District of Columbia.

L. M. CHILD
vs. } 2365. Equity docket 11.
NICHOLAS P. TRIST.

And now comes, by counsel, into this honorable court, the above-named Nicholas P. Trist, a resident of Alexandria, Virginia, and prays the court that the decree pro confesso entered herein on the 22d July, 1871, for want of his appearance, may be set aside, and that he be permitted to enter his appearance in the cause by his counsel.

THOMAS J. DURANT,
For Defendant.

JULY 27, 1871.

Upon hearing the above-petition it is ordered this 27th day of July, 1871, that the decree pro confesso entered on 22d July, 1871, be set aside, and defendant allowed to enter his appearance in the cause.
By the court.

14 *Appearance of def't.—July* 27, 1871.

In the supreme court of the District of Col'a.

CHILD
vs. } 2365. Equity docket 11.
TRIST.

Enter my appearance for defendant.

THOMAS J. DURANT.

JULY 27, 187'

Appearance entered for defendant as per precipe directed.
By the clerk.

Demurrer to bill.—Filed Aug. 1, 1871.

Supreme court of the District of Columbia.

LINUS M. CHILD
vs. } 2365. Equity docket 11.
NICHOLAS P. TRIST.

The demurrer of Nicholas P. Trist, defendant, to the bill of complaint of Linus M. Child.

The defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained
to be true in such manner and form as the same are therein and
15 thereby set forth and alleged, doth demur in law to the said bill;
and, for cause of demurrer, showeth that the said complainant has not by his said bill made such a case as entitles him in a court of equity to any discovery or relief from or against this defendant touching the matters contained in the said bill or any of such matters.

Wherefore and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

N. P. TRIST.

THOMAS J. DURANT,
Of Counsel.

16 Nicholas P. Trist, the defendant in the above cause, being duly sworn, says that the above demurrer is not interposed for delay.

N. P. TRIST.

Sworn to and subscribed before me this 31st day of July, 1871.

ROB'T BELL,
J. P. for Alexandria City, Va.

I certify that, in my opinion, the above demurrer is well founded in law.

31 July, 1871.

THOMAS J. DURANT.

The defendant prays leave of the court to file the above demurrer.

THOMAS J. DURANT,
His Counsel.

AUGUST 1, 1871.

17 *Order sustaining demurrer and dismissing bill.—Filed Dec'r 23,* 1871.

In the supreme court of the District of Columbia.

LINUS M. CHILDS.
vs.
NICHOLAS P. TRIST.
2365. Equity docket 11.

This cause coming on to be heard upon the demurrer filed therein, it is, this 23d of December, 1871, ordered that said demurrer be sustained, and that the bill be, and hereby is, dismissed with costs.

By the court.

A. WYLIE.

Appeal to gen'l term.—Filed Dec. 27, 1871.

CHILD
vs.
TRIST.
2365. Equity docket 11.

The clerk will please enter an appeal to court in banc, from decision of justice holding special term.

B. F. BUTLER.
R. D. MUSSEY, *For Pl'ff.*

Appeal to the general term from the order of the special term, made Dec'r 23, 1871, is hereby ordered.

By the clerk.

18 MONDAY, *Jan'y 1st*, 1872.

Proceedings before the general term of the supreme court of the District of Columbia, commencing on the first Monday and first day of January, 1872.

THURSDAY, *January* 25, 1872.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Justices Olin, Wylie, Humphreys, and Mac Arthur.

In the supreme court of the District of Columbia.

L. M. CHILD
vs.
N. P. TRIST. } 2365. Eq. docket 11.

19 This cause came on to be heard at this term, upon the complainant's appeal from the decree at the special term, and was argued by the defendant's counsel, no counsel appearing for the complainant; and thereupon upon consideration thereof it is ordered, adjudged, and decreed, that the decree of the special term from which the complainant's said appeal was prosecuted be, and the same is hereby, in all things affirmed, with costs.

Consent of def't's solicitor to opening decree.—Filed Feb'y 17, 1872.

In the supreme court of the District of Columbia, the 17th day of Feb'y, 1872.

CHILD
vs.
TRIST. } 2365. Equity docket 11.

At the request of the plaintiff's counsel, who desires to be heard in this case, I consent that the decree heretofore passed at this term affirming the decree below may be vacated and the case stand for hearing.

THOMAS J. DURANT,
For Trist.

20 SATURDAY, *February* 17, 1872.

Session resumed pursuant to adjournment. Present, Cartter, chief justice, and Justices Olin, Wylie, Humphreys, and MacArthur.

CHILD
vs.
TRIST. } 2365. Equity docket 11.

By consent of parties, by their solicitors, it is ordered, adjudged, and decreed that the decree entered January 25, without argument of complainant's counsel, be, and the same is hereby, vacated; and it is ordered that the cause stand for argument on both sides, if the parties desire it.

20½ Proceedings before the supreme court of the District of Columbia, in general term, commencing on the third Monday, 15th day, of April, 1872; present, Chief Justice Cartter, and Justices Wylie, Humphreys, and Mac Arthur.

SATURDAY, *May* 11, 1872.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter and Justices Olin, Humphreys, and Mac Arthur.

LINUS M. CHILD, COMPL'T,
vs.
NICHOLAS P. TRIST, DEF'T. } 2365. Equity docket 11.

This cause having been re-argued, in pursuance of the order of this court on the 17th of February, 1872, and duly considered and fully understood, it is now ordered, adjudged, and decreed that the decree of the special term, from which this appeal was prosecuted, be, and the same is hereby, reversed; and it is further ordered that the cause be remanded to the special term for further proceedings, according to law, and that the defendant pay the costs of this cause in this court.

21 *Answer of defendant.—Filed June* 2, 1872.

In the supreme court of the District of Columbia.

LNIUS M. CHILD
vs. } No. 2365. Equity docket 11.
NICHOLIS P. TRIST.

To the honorable the justices of the supreme court of the District of Columbia:

The answer of Nicholas P. Trist to the bill of complaint of Linus M. Child.

The defendant now, and at all times hereafter, reserving all manner of benefit and advantage of exceptions to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or to so much and such facts thereof as this defendant is advised is material for him to make answer unto, he answers and says:

First. He admits that plaintiff is a resident of Boston, Massa-
22 chusetts, and that he brings this suit in his own name, but as to his being executor of the last will and testament of his father, Linus Childs, defendant knows nothing, and can neither admit nor deny the same, but leaves plaintiff to make such proof thereof as he may be advised or can.

Second. Defendant admits himself to be a resident of Alexandria, in the State of Virginia.

Third. And further answering, defendant says he is ignorant whether, prior to the 27th day of August, 1870, the plaintiff was a partner of the said Linus Child, doing business in said Boston as attorney and counsellor at law, and had been so for several years, and can neither admit nor deny the same; but defendant distinctly denies that he ever employed such partnership, or had any contract for professional services, or any relation with it whatever.

23 Fourth. And further answering, defendant says he admits that, in the latter part of 1869, to wit, in the month of November of that year, and not in the latter part of 1868, or in the early part of 1869, as falsely alleged in plaintiff's bill, he employed the said Linus Child, not as counsellor at law, but as a claim-agent. Whether the plaintiff was at that time in partnership with Linus Child the defendant does not know, and cannot either admit or deny. Defendant does distinctly deny that he then employed the plaintiff, or knew him, or had anything to do with him, and avers that whatever employment there was was of Linus Child alone as agent to attend to his case before Congress, and was not in any way an employment of plaintiff. And further answering, he denies that he employed Linus Child to prepare his claim, because the case had been fully prepared for presentation by the defendant himself long before, to wit, prior to March, 1867. Defendant

24 admits that he did employ Linus Child to present and prosecute
a claim against the United States for compensation for services in negociating the treaty of Guadalupe-Hidalgo, and that such employment occurred under the circumstances immediately hereafter set forth.

Defendant, further answering, denies that, as a supplicant and a mendicant, he sought the services of Linus Child, as falsely alleged in complainant's bill, and that, on the contrary, the said Linus Child proffered his services and sought the employment; that defendant had never known or heard of Linus Child before on or about the twenty-fifth of September, 1869, when a letter was received from the said Linus Child, dated Boston, Massachusetts, September 23, 1869, addressed to Isaac Hinckley, esq., Philadelphia, in which he stated it had been suggested to him by Mr. Jefferson Coolidge that he should take charge of
25 defendant's application to Congress for an allowance for services
as commissioner to Mexico, stating he, Linus Child, was aware that his compensation must depend entirely upon the allowance of the claim, and that he must advance all his own expenses, and asking for such information from Mr. Hinckley as would enable him to form an opinion for his own guidance in the matter; and defendant refers to said letter which is hereunto annexed for reference, marked "Exhibit N. P. T., No. 1;" that Mr. Hinckley, having communicated the said letter to the defendant, defendant addressed a letter in reply thereto to the said Linus Child, dated at Philadelphia on the 1st October, 1869, informing him that under certain circumstances therein explained, defendant would desire his services. A copy of said letter is hereunto annexed and filed as Exhibit N. P. T., number two.

And this respondent, by way of explaining the nature of
26 his case and making known his position at the time that he ac-
cepted and engaged the services of Linus Child, the father, further answering, says that when the treaty of Gaudalupe-Hidalgo was concluded and signed by him, nominally in the character of commissioner plenipotentiary, with which he had been invested by the President of the United States, neither that or any other official character did, in fact, belong to him, his diplomatic powers having then became annulled, and their exercise for any purpose forbidden, and the work of making said treaty having been engaged in and performed simply in pursuance of a resolve taken by him as an American citizen, so to act for his country's sake, which temerity on his part was, in the end, fully justified by the service thus contumaciously rendered being accepted by the same President who had peremptorily forbidden it, and, on his urgent recommendation, in the discharge, as he
27 said, of a solemn duty to the country, ratified by the Senate; that,
simultaneously with his resolve to incur the responsibility of venturing upon the attempt to render the service so accepted, this respondent formed another resolve, namely, that let that attempt result as it might, he never would take pay for having run a risk of a nature so perilous to his responsibility in the eyes of his fellow men. In the event of a failure it would certainly not be optional with him to receive such pay; and the whole nature of the case was such as to require, for his own satisfaction and self-respect, that his resolve to attempt the service should have incorporated with it the further resolve never to take pay for having exposed himself to the risk attending that attempt; in a word, never to seek, never to accept if proffered, personal advancement of any kind for having so acted. Such being the condition upon which this respondent allowed himself to incur that risk, it was faith-
28 fully observed by him upon his return to Washington from that

mission; and it continued to be so observed through the space of nearly twenty years. That service to the country having thus been accepted by the President and Senate, the work and its author silently sank out of sight, together with the fact, known to none but himself and immediate family, that the service had never cost the Government one cent; that, on the contrary, the entire disbursements from the Treasury on account of that mission, the total sum paid to him included were less in amount than they would have been had his recall been obeyed. No voice was ever heard invoking attention to this fact. Finally, however, after nearly twenty years of faithful adherence to it from December, 1847, to the winter of 1866, at an age bordering on three score years and ten, his tenacity of purpose gave way to the pressure of circumstances. Having outlived the ability much longer to discharge
29 the duties of the employment in the service of a railroad company on which he had for many years depended for his subsistence, he found himself constrained to yield to the advice of friends, and succumb to the necessity of foregoing all further indulgence in the fidelity thus far maintained to that old resolve of his. Having made up his mind so to act, this respondent wrote a memorial, for presentation to Congress, having for its object to bring his case for the first time to the notice of the National Legislature, and if, in their judgment, justly due, to obtain a fair remuneration for the public service so performed. In March, 1867, he repaired to Washington with that memorial and supporting documents, intending then to present it. From every member of either House to whom he addressed himself, and some of whom were so obliging as to read the memorial, he experienced the most encouraging reception. Nevertheless, the pressure of great topics of vital
30 national importance being too great to admit of the obtrusion of matters of purely personal interest, he determined to postpone the presentation of his case till that pressure should have passed away, or greatly lessened. Again was the intention formed, towards the close of the year 1869, of presenting his memorial at the opening of the then coming session, when the proffer came of the services of Linus Child, as above related. This determination on his part was generally known among his relatives and friends, and among them to Jefferson Coolidge, a resident of Boston, and a nephew of defendant's wife. Mr. Coolidge, being of opinion that it was important to defendant that his case should have before Congress the assistance of an agent, suggested to defendant the employment of one with whom he, Coolidge, was acquainted, and whose terms would be 25 % of the amount obtained. Coolidge also mentioned the affair to Linus Child, telling him that in case of
31 his undertaking the service he would have to bear his own expenses, and look for his compensation entirely to the allowance expected to be made by Congress. It was in consequence of this conversation with Jefferson Coolidge that Linus Child wrote to Isaac Hinckley the letter above referred to, and before the communication of which letter to him this defendant had never heard of said Linus Child in any way.

And, further answering, defendant says that, when acting under the opinion of his friends, he adopted the view that the employment of an agent was advisable for obtaining attention to his case before Congress, he had applied to an intimate friend to attend to the matter, as was stated by defendant to Linus Child in the letter addressed to him on 1st October, 1869, above referred to as Exhibit N. P. T., No. two, and when defendant ascertained that he would be unable to secure the services of the friend referred to, about the middle of October, 1869, the de-

32 fendant forwarded to Linus Child, at Boston, various documents,
one of which was a portion of the memorial to Congress, which had been prepared by defendant prior to March, 1867, and other papers necessary to show the character of his case, and the opinions entertained by various persons of great respectability and intelligence in regard to it. This letter and documents were sent to Linus Child through Jefferson Coolidge, of Boston, who delivered them to Child before the 1st November, 1869, as defendant is informed and believes.

Defendant heard in December, 1869, from Mr. Coolidge, that Child had called upon him, and stated he would undertake the case, and would come to Washington after the Christmas holidays.

Sixth. And, further answering, defendant says that he admits that under said agreement the said Linus Child did make two journeys to
Washington, but denies that he paid out considerable sums of
33 money, and denies that he spent much time in and on behalf of
the preparation, presentation, and prosecution of the said claim; but the truth is that instead of coming to the city of Washington soon after the Christmas holidays of 1869, as he had led defendant to believe he would do, he did not come to Washington until near the end of the first week in March, 1870, thus allowing three months of the session of Congress to expire without any movement in the case; that the defendant having come to Washington to meet Linus Child, at his request, found, to his disappointment, that Linus Child had not made himself acquainted with the facts of the case, and, at their meeting, defendant, by his assistance, enabled Child to prepare a petition to Congress, which Child on the same day placed in the hands of Mr. Senator Charles Sumner, chairman of the committee on foreign relations, who presented
the same to the Senate a few days afterwards; Child having left
34 the city on the same day that he had arrived, and that the peti-
tion had been prepared, saying to defendant he would soon return in company with his son, of whom the defendant then for the first time had heard, and who, Child said, would aid him in pushing the business. That the son, Linus M. Child, did come to Washington on 28th April, 1870, and remained during that and the following day, on the evening of which he left the city. Defendant found from conversation with Linus M. Child, that he also had failed to acquaint himself of the facts of the case, and required defendant's assistance as to those facts in preparing a statement of the case for the committee on foreign relations, which he, the next day, informed defendant he had submitted to Mr. Sumner, after which he, Linus M. Child, the son, said he had determined to remodel the statement, but whether this was ever done de-
fendant does not know. That said Linus Child, the father, did
35 not come again to Washington until the morning of the 25th May,
1870, when defendant met him by appointment, and accompanied him to the Capitol, when Child introduced him to one of the Senators, Mr. Buckingham, and defendant was informed by Child that he had spoken to several members of the Committee of Foreign Affairs about the case, who, he said, had expressed themselves favorably. Linus Child, the father, left Washington on the same day, May 25th, and defendant refers to a letter addressed to him by Linus Child, the father, dated the said 25th May, 1870, showing this fact, which is herewith annexed for reference, and marked Exhibit N. P. T., No. three. And the said Linus Child, the father, never came to Washington again on this business.

And, further answering, defendant says that, as to whether the said Linus Child paid out considerable sums of money, he is ignorant, and cannot either admit or deny the same, and leaves the plaintiff to

36 make such proof as he may be advised; but defendant is
informed and believes, and so states, that the travelling expenses
of said Linus Child, and also of his son, Linus M. Child, were materially
lessened by free railroad passes furnished to them by a railroad
company, through friendly regard for this defendant, and in consideration
of faithful services by him performed, whilst in the employ of said
company; and that said Linus Child had no occasion to expend in
Washington more than the ordinary fare at a hotel, which, for the
whole time he was here on both occasions, could not have exceeded ten
dollars at the very utmost.

And, further answering, defendant says that he denies that it was
agreed and understood, at least by this defendant, that he, the plaintiff,
should devote his time and services to the case jointly with the said
Linus Child, and that if the plaintiff did so in the life-time of the
37 father, Linus Child, it was solely as an assistance to his father,
but not under any relation with this defendant, who had agreed
with the father only; and that the father, Linus Child, alone, had
charge of the case up to the time of his decease, as will more fully appear
by reference to the letter from Linus Child to this defendant, dated
August 13th, 1870, and hereunto annexed for reference, and marked Exhibit
N. P. T., No. four.

And, further answering, defendant admits that Linus M. Child, the
son, came to Washington, as above-stated, on the 28th April, 1870, having
been sent by his father, and remained part of two days attending to
defendant's case; and he admits that again, or about the fourth day of
December, 1870, after the death of his father, the said Linus Child came
again to Washington and gave some attention, defendant does not
know what, to the case; since, on the said fourth day of December,
1870, the said Linus M. Child came to the residence of defendant
38 in Alexandria, in the State of Virginia, and in conversation told
defendant that his business did not permit him to remain more
than one day in Washington, but he promised to return about the middle
of that month, which, however, the said Linus M. Child entirely
neglected and failed to do, and this defendant having already suffered
from the neglect of his case by the two Childs', father and son, and the
then session of Congress being a short one, and to expire on the 4th
March, 1871; and the defendant being anxious and alarmed at the neglect,
after the whole month of December had gone by and ten or twelve
days in January in addition, and nothing having been heard from the
said Child, defendant wrote to Jefferson Coolidge to know what could
have become of the said Child, in consequence of which anxious enquiring
addressed to said Coolidge, the said Linus M. Child addressed to
defendant the letter under date of Boston, January 14, 1871,
39 which is hereunto annexed for reference and marked Exhibit N.
P. T. No. five, and the said Linus M. Child did not come to Washington
until the 20th February, 1871, before which time the bill making
the allowance of money to defendant had already passed the Senate.

And, further answering, defendant says that, as to whether as alleged in
the bill, the said Linus M. Child spent considerable sums of money in the
prosecution of this claim, he knows nothing, and cannot admit or deny the
same, but leaves him to make such proof as he may be advised. Defendant
expressly denies that any other expenditures were necessary
than ordinary travelling expenses, and he is informed and believes, and
so states, that for all or a large portion of his (complainant's) travel
from Boston to Washington, he had free passes given him as above
already stated in regard to complainant's father, Linus Child.

40 And, further answering, the defendant says that whether or not the services of the said Linus M. Child consisted, as he alleges in his bill, in an open, honorable, and fair presentation of the said claim of the said Trist to the committees and members of the two houses of Congress, and whether they were in no manner nor respect clandestine or improper, this defendant is ignorant and cannot either admit or deny, but leaves plaintiff to make such proof as he may be advised or can; but defendant says that, to the best of his knowledge, information, and belief, neither Child, the father or the son, ever appeared in the matter before any committee of either branch of Congress, and this defendant expressly states that no wish was ever expressed or intimated by him to either one of the said Childs', or to any other person, that any improper or clandestine means should be employed on defendant's behalf, or that any other than the most strictly true statement of the facts of the
41 case should be employed to influence the course of any one in regard thereto.

And, further answering, defendant says that, after the bill making him a pecuniary allowance had passed the Senate, the complainant, Linus M. Child, came to defendant's house in Alexandria, Virginia, on or about the twentieth day of February, 1871, and then and there informed defendant he feared that honorable Henry L. Dawes, a member of Congress from Massachusetts, would oppose the bill that had passed the Senate making the allowance to defendant; but that if he, defendant, would consent, that five hundred dollars out of the allowance expected should be employed, he, the said Linus M. Child, would secure the honorable Henry L. Dawes' vote, which proposal defendant at once rejected, and immediately after, when witnesses had entered the room, and defendant had repeated in their hearing what the said Linus M. Child had just said, he, the said Child explained that the sum of five
42 hundred dollars was not to go to the profit of the said honorable Henry L. Dawes, but to be paid to one Gooch, a lawyer, who professed to have influence with the said honorable Henry L. Dawes, and this defendant verily believes and so states that the proposal of the said Linus M. Child, had no other object than to obtain a portion of the expected allowance by Congress, by a false and fraudulent pretext.

And, further answering, the defendant says that, on the same 20th February, 1871, Linus M. Child addressed to defendant the letter dated February 20th, 1871, which is hereunto annexed for reference, and marked Exhibit N. P. T. No. six; and that on the same day the said Linus M. Child left Washington, and did not return again until after the bill had finally passed.

Seventh. And, further answering, defendant admits that, on the
43 7th day of August, 1870, the said Linus Child died, but he denies that since that time the plaintiff has prosecuted the claim in any further or other manner, than has in the preceeding part of this answer been set forth and admitted.

And, further answering, defendant says that if he can be charged at all for the services of Linus M. Child, which he denies, then that said services can only be compensated on a quantum valibemet; and from the imperfect, negligent, and insufficient manner in which they were performed were of no value to defendant; but, on the contrary, caused him great delay, anxiety, and trouble.

And, further answering, defendant says that his agreement with Linus Child, the father, whatever it was, was for his, the said Linus Child' personal seevices only, and the said agreement terminated with the life of the said Linus Child; that, during his life-time the said Linus

44 Child, the father, neglected and failed to perform his duty under the agreement, and that his services, if they can be charged to defendant at all, which this defendant expressly denies, were of very little value, whilst at the same time any little value which they in themselves may have possessed, considered, apart from the anxieties, trouble, and positive detriment caused to the defendant by the disappointment of his just expectations of active and efficient services, was greatly overbalanced by such anxieties, trouble, and positive detriment.

And further answering, the defendant says, that all the service performed by the said Linus Child, the father, and by the said Linns M. Child, the son, as set forth in the bill of complaint, are of such a nature as to give no cause of action against this defendant in any court, either of common law or equity.

Eighth. And, further answering, defendant says that he admits that, on or about the 20th day of April, 1870, a bill was passed by
45 Congress and approved by the President, providing for the payment of a sum of money by the United States to this defendant, the sum of $14,559.90.

Ninth. And, further answering, defendant says that he admits that, subsequent to the approval of said act, he has informed the plaintiff that he shall not pay to him, either on his own account or as the representative of said Linus Child, the twenty-five per cent. of the said sum so appropriated to him; but he denies that he ever said that he will repudiate the agreement heretofore made as aforesaid, although acknowledging that he made it, but he says that the truth of the matter is as follows:

That, as soon as the intelligence of the passage of said bill reached the said Linus M. Child, he came without delay to Alexandria, Virginia, and to the residence of defendant, on Sunday the 23d April, 1871,
46 and upon his intimating a desire to defendant to be authorized to draw the appropriation from the Treasury, defendant stated to him that in consquence of the neglect of his case by the plaintiff and by his father, Linus Child, he had been compelled to engage the services of various friends to explain his case to members of Congress, and that these friends had, by reason of such neglect, protested against his considering himself bound by the agreement he had made with Linus Child, as the latter's part of the contract had not been performed: consequently defendant informed the said Linus M. Child he was not then prepared to settle with him; that he had not determined to pursue the course advised by those friends, to pay only a just and reasonable compensation for such services as actually been rendered, but had determined to make a statement of all the facts to Jefferson Coolidge and Isaac Hinckley, jointly, and abide by their judgment as to whether
47 he was bound or not to carry out the engagement with Linus Child by paying in full twenty-five per centum, or only such sum as would be a proper remuneration for such services as had been rendered; and if those persons, Coolidge and Hinckley should be of opinion that he ought to pay the whole twenty-five per centum, he would at once do so; but if they should be of opinion that the whole amount was not jointly due, that the amount to be paid should be settled by arbitration; and with this announcement of defendant's determination the said Linus M- Child appeared then to be satisfied.

And defendant, further answering, says that he immediately, though laboring under considerable illness, set himself to the task of preparing the statement, and was actually so engaged when he was informed that Linus M. Child, availing himself of the assistance and influence of the Hon. B. F. Butler, member of Congress, induced the Comptroller

48 of the Treasury, R. W. Tayler, to refuse to countersign the war-
rant which, in obedience to law and in due conformity thereto,
had issued from the proper officer in his (defendant's) favor, for the pay-
ment ordered by Congress, and against this illegal, and arbitrary con-
duct the defendant at once filed his written protest.

Tenth. And further answering, defendant admits that, on the twenty-
fifth day of April, 1871, the money appropriated by the said act of Con-
gress of April 20, 1871, had not yet been paid to defendant, but was
still in the Treasury of the United States; and he admits he, defendant,
had at that time no other property in the district than said fund; but
defendant denies that he then purposed, or at any time ever purposed
or designed to obtain said money and remove it from the jurisdiction of
this court for the purpose of defrauding the plaintiff, and of evading
the payment to him, either on his own account, or as representa-
49 tive of the said Linus Child, of the amount due them for their
service, expenses, &c., as aforesaid, as determined and fixed by
this defendant, as alleged in the tenth article of complainant's bill; on
the contrary, this defendant avers that, although as he is advised and
verily believes, neither the said Linus Child, (the father,) nor the said
Linus M. Child, (the son,) ever had, or now have any claim upon him
which they or either of them have a right of action for, in law or
equity, yet he had determined, before this suit was brought, to pay
such sum as disinterested friends should say ought to be paid.

Eleventh. And, further answering, this defendant says that he is ad-
vised, and verily believes, and so avers, that the plaintiff has no lien
upon this fund, as falsely alleged in the bill; and defendant avers that,
both by reason that the law gives no right of action for such
50 services, as are described in the bill, and because the nature of the
claim set up gives no lien upon the funds, this honorable court is
entirely without jurisdiction in the premises.

And now this respondent denies all, and all manner of unlawful combinations and confederacy, wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary, for this respondent to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

N. P. TRIST.

51 I, Nicholas P. Trist, the above-named respondent, do solemnly
swear that I have heard read the answer by me subscribed, and
know the contents thereof, and that the facts therein stated upon my
personal knowledge are true, and that the facts therein stated upon my
information and belief, I believe to be true.

N. P. TRIST.

Subscribed and sworn to before me June 3, 1872.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, J'R, *Ass't Clerk.*

THOMAS J. DURANT,
Solicitor of Defendant.

52 *Exhibit N. P. T., No.* 1, *to def'ts answer.—Filed June* 4, 1872.

BOSTON, *Sept.* 23, 1869.

ISAAC HINCKLEY, ESQ.:

MY DEAR SIR: Our mutual friend, T. Jefferson Coolidge, esq., has spoken to me in regard to a claim of Mr. Trist, formerly consul at , against the U. States Government for services as minister or representative of the Government at Mexico, at or near the conclusion of the Mexican war. Mr. Trist, I understand, is now in the employment of the railroad under your charge. Since that you have examined somewhat his claim, the suggestion of Mr. Coolidge is that I should undertake to take charge of an application of Mr. Trist to Congress for an allowance of his claim. My compensation must depend entirely upon the allowance of his claim, and I must advance all my own expenses. It has occurred to me that I might undertake the management of it upon the terms proposed. I could not ascertain enough in regard to the
claim to enable me to determine whether I would undertake it or
53 not. I now write to ask you what you think of the claim;
whether you think it a just one; whether you think there is a reasonable probability of its allowance. Should I visit Philadelphia for the purpose of seeing Mr. Trist, and ascertaining something about the nature of his claim, and the probabilities in regard, I must do so at my own expense; this small sum I do not care to expend without knowing more than I now do about the matter. I write now, at the suggestion of Mr. Coolidge, to ask you, if it will not be too much trouble, to inform generally what you think about the claim, and whether you think there is enough in it to justify me in incurring the expense of going to Philadelphia with a view of undertaking to act for Mr. Trist, in case it shall be deemed advisable to do so.

Very truly & sincerely yours,

LINUS CHILD.

54 *Exhibit N. P. T., No.* 2, *to def'ts answer.—Filed June* 4, 1872.

(Copy.)

PHILADELPHIA, *Oct.* 1, '69.

LINUS CHILD, Esq.,
Boston, Mass.:

DEAR SIR: Your letter to Mr. Hinckley (of 23d ult'o) having been communicated to me, I will reply to it by acquainting you of the present state of the matter to which it relates.

It so happens that I have all my life been thrown into relations of familiar intimacy, personal as well as official, with men holding high public trusts. In no instance, however, did I ever make to any one of them a request, or express a personal wish, either on my own behalf or on behalf of any one else, with a view to influence his action upon any public matter in the discharge of official duty. And so, likewise, as regards a case of my own, arising out of my mission to Mexico—1847–'8. When
some three years ago, upon the advice of Mr. Sam'l M. Felton
55 and other friends, I made up my mind to present that case for
the consideration of Congress, I resolved at the same time not to make any request upon the subject of any man in office, not to do anything whatever in the way of solicitation beyond asking simply the attention of a few members of the Senate and of the House to the fea-

tures of the case, leaving them to form their own judgment of its merits, and of the course on their part which these might demand. When told that a case must be "followed up" or there can be no hope of its being acted upon, I still resolved that mine should be made to depend for its progress upon the impression made by its own merits, and the interest, such as this might be, which they should awaken in the minds that had taken the trouble to acquaint themselves of them.

But for an illness which disabled me from so doing, I should have gone to Washington last February, and then launched my bark to en-
counter whatever fate might await it. All action on my part
56 having thus been delayed till next session of Congress, the gen-
erous interest in me taken by my wife's nephew, Mr. Jefferson Coolidge, caused him so make the suggestion, that I should commit the conduct of my case in Congress to a gentleman (not named) known to him as competent to get justice done to it.

Some time after this suggestion came from Mr. C., and whilst I was still undecided as to availing myself of it, though strongly inclined that way ever since receiving it, my wife—in view of the already decided and daily strengthening probability that my health will peremptorily require my going to Florida early in the winter, and the consequent impossibility of my personal attendance in Washington—asked my consent to her writing to an intimate personal friend of mine, and between whom and myself a strong personal attachment has existed for about forty years, and who is thoroughly conversant with the case, to en-
quire if it would be possible for him to take charge of it. My
57 consent to her so doing had just been given when your letter to
Mr. Hinckley was communicated to me.

Such being the state of the case, I must now wait the result of this application to him. Whilst feeling sure of the strongest disposition on his part to render me any service in his power, I strongly doubt if he can make it compatible with his engagements to serve me in this way. If he cannot, then I shall be glad to engage your services. Mrs. Trist has not yet written to him, but will do so without delay, and a reply from him may be expected in the course of a couple of weeks. So soon as received, I will write to you, and if it be unfavorable to her and my wishes, I will then furnish you with materials fully sufficient to enable you to judge for yourself, both as to the justice of the matter and the extent to which Congress would be likely to go in this award.

Very respectfully, yours,
(Signed) N. P. TRIST.

58 P. S. I expect to have occasion to write to you again long be-
fore then, but I will mention here that I expect to go as far south
as Alexandria, Va., about the 15th Nov.

Exhibit N. P. T., No. 3, to def't's answer.—Filed June 4, 1872.

WASHINGTON, *May* 25, 1870.

MY DEAR MR. TRIST: I have concluded to leave for Boston this evening.

Since I saw you I have had an interview with Senator Cameron. He enters heartily into your case; says that he will do all in his power to secure a favorable report from the committee, and will do all in his power to carry it through.

I also afterwards had the good fortune to see Senators Sumner and

Cameron together, and we three had another conversation about your case. Cameron told Senator Sumner that you ought to have your claim. Sumner said "I think so, too," and said "Do you think, 59 Cameron, that there is any difficulty in carrying it through our committee?" Mr. Cameron replied: "I think there will be no difficulty with our committee." Sumner replied, "I think so, too." Mr. Sumner then said to me as follows: "I want to get this thing through for the benefit of Mr. Trist."

Mr. Sumner says he will bring the matter before the committee next Tuesday, and if the committee go in favor of it, he will report it to the Senate with a written report recommending its passage. And as soon as the committee agrees to report he will write me that I may come on to Washington at once.

I will inform you at what time I shall be at Washington again.

Very truly, yours,

LINUS CHILD.

Hon. N. P. TRIST.

60 *Exhibit N. P. T., No. 4, to def'ts answer.—Filed June* 4, 1872.

[Office of Child & Powers, counsellors at law, 27 Tremont Row, cor. Pemberton Square.]

LINUS CHILD. LINUS M. CHILD. CHA'S E. POWERS.

BOSTON, *Aug. 13th*, 1870.

HON. N. P. TRIST:

MY DEAR SIR: After a most provoking delay, I have just received the report and bill which was reported by Senator Sumner in your favor July 14th, the day before Congress adjourned. I presume you have seen report and bill. If you have not, you can, of course, obtain one at Washington.

I have just seen Mr. Sumner, and he assures me the committee was quite well disposed towards your claim. They report a balance of $13,762.40, and the further sum of $797.50 for contingent expenses. The first sum they report due you April 8th, 1848. They do not allow you any interest on that sum. On the sum for contingent expenses, 61 $797.50, allow interest from April 8, 1848. In my interview with Mr. Sumner he said they would have been glad to allow interest on both sums; but as you never made any claim for the payment beyond what the Government paid you on your return from Mexico, and as you have never asked for it until the presentation of your petition, they did not feel at liberty to allow interest on the sum till you asked for it.

Mr. Sumner says he has no doubt it will pass Congress. The amount, as I calculate the interest to be paid you, will be about $16,000.00.

I think I can get Congress to allow the interest, and upon the ground that Mr. Polk, by availing himself of your labors in negotiating the treaty, and at the same time refusing to pay you for your services, placed you in such a position that, as a high-minded and honorable man, you could not, without compromising your own self-respect, ask for it at the time.

62 I shall go to Washington as soon as Congress assembles, in December next, and look after it and do anything that can be done to get the bill passed, and the additional interest allowed.

I feel very much disappointed that Mr. Sumner delayed his report so long before making his report. I did not think it expedient to press him. He was very busy, and is a man that likes to have his own way. I know him so well that the only expedient course was to not press him. And as he has come to a result by taking his own time, he will hereafter go in for you with all his heart, and I now think you are sure of getting about $16,000.00.

Very sincerely & truly yours,

LINUS CHILD.

63 *Exhibit N. P. T., No. 5, to def'ts answer.—Filed June* 4, 1872.

BOSTON, *Jan.* 14, 1871.

MR. TRIST:

DEAR SIR: I am quite ashamed that I did not appreciate your anxiety in regard to your bill; as you are confined to your bed, while I, in robust health, am so occupied that I did not write, because I had nothing of importance to communicate. I did not go to Washington, as I expected, on the 19th, because I was engaged in court here. I then waited until after the holidays, for I knew it would do no good to go then, during the holidays.

I was in Washington on Thursday last, but as the river was frozen I could not get an opportunity to go down to see you, as after twelve o'clock I was dancing attendance on Mr. Sumner. I at last caught him at 7½ in the evening. I suggested to him our plan. He remembered that you spoke to him about it in 1864 & '5, and thinks you ought to have interest from that time, and is ready to make that motion in the Senate.

64 The only hesitation he has is as to the policy of amending the present bill, and his reason is, that the Senate has a regular calendar of bills which come before it in order. Any Senator who desires to advance any matter makes a motion to bring forward any matter generally on the ground of public importance. Mr. Sumner now thinks that they will not go back to the calendar this session, and so that your bill will not be reached in course this session. He has agreed, however, to call your case forward by a special motion, but it requires either ⅔ or a unanimous vote to bring it forward, and he fears if after such an effort you should undertake to increase the amount considerably, it might give rise to opposition; for, in order to get the matter forward, he proposes to state that you are very unwell; that what you ask for is very moderate, and that your bill cannot be opposed by any one who understands the case, and hence will occupy no time of the Senate.

65 He fears if after such a statement he should propose any considerable addition, that some Senator might object, and desire further investigation. He has, however, agreed to talk over the matter with his committee on Tuesday next, and if they all recommend interest from '65, he will put it in the bill, as the unanimous recommendation of the committee. He says that he will do the best he can for you, and I told him I thought you would be content to leave it in his hands. And he says, if possible, he will bring it forward next week.

Now, if you can think of any better way to have the matter, I have no doubt Mr. Sumner would be glad to know your wishes and conform to them.

Will you be kind enough to watch the papers, and if it sh'd go through the Senate notify me. Our papers condense their dispatches so much, that they seldom report private bills unless they refer to parties in this region.

I have no more free passes from Mr. Hinckley. Do you feel like applying for three more? I should not like to ask for them, but it makes a good deal of difference in my expense.

Yours, &c., L. M. CHILD.

66 *Exhibit N. P. T., No. 6, to def'ts answer.—Filed June* 4, 1872.

FORTY-FIRST CONGRESS U. S.,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Feb'y 20, 1871.

MR. TRIST:

Everything looks very favorable. I found that my father had spoken to Butler, & Banks, & others. Mr. Banks says he will "try hard" to get it before the House. He has two more chances, or rather "morning hours," before Congress adjourns. Butler will go in for it. Dawes promises to go for it. I have sent your letter and report to Mr. Woodward, of Pa. It may not be reached till next week. Please write to your friends to write immediately to any member of Congress. Every vote tells; and a simple request to a member may secure his vote, he not caring anything about it. Set every man you know at work, even if he knows a page, for a page often gets a vote. The most I fear is indifference.

Yours, &c., L. M. CHILD.

67 *Replication.—Filed July 8th*, 1872.

In the supreme court of the Dist. of Columbia, July 8th, 1872.

L. M. CHILD
vs. } 2365. Eq. dock. 11.
N. P. TRIST.

The plaintiff joins issue on the defendant's answer.

R. D. MUSSEY, *for Pl'ff.*

Replication entered and docketed.
By the clerk.

68 *Testimony on behalf of complainant.*

In the supreme court of the District of Columbia, the 11th day of March, 1873.

CHILD
vs. } 2365. Equity docket 11.
TRIST.

It is hereby agreed, that the deposition of Linus Child, plaintiff in the above entitled cause, may be taken before E. H. Abbott, a United States commissioner, in Boston, Mass., and in case he be unable to take the same, before any other United States commissioner, upon the annexed interrogatories and cross-interrogatories.

THOMAS J. DURANT, *for Def'd't.*

69 In the supreme court of the District of Columbia.

L. M. CHILD
vs.
N. P. TRIST.
} 2365. Equity docket 11.

Interrogatories to be propounded to Linus M. Child, esq., of Boston, Mass., on behalf of plaintiff.

First. State your name, age, residence, and profession; and whether or not you are the plaintiff in this case; and, if yea, in what capacity you bring this suit?

Second. State whether or not you are the executor of the will of the late Linus Child; and if you shall have answered that you are, produce a certified copy of the letters executory issued to you.

Third. State whether or not during the life-time of the late Linus Child you had any business relations to him; and, if yea, state the character thereof, and during what years did they exist.

70 Fourth. State if you are acquainted with the defendant; and, if yea, since when.

Fifth. State whether or not your father or yourself, or both jointly, were ever employed by the defendant professionally; and, if yea, state what such employment was, when it began and ended, and the compensation, if any, agreed upon.

Sixth. If you shall have answered to the fifth interrogatory that there was any such employment, state fully the character, nature, and extent of the services rendered.

Seventh. If there were any such employment, and any compensation were agreed upon, state whether or not it has been paid. And if you answer that it has not been paid, state whether or not any demand has been made upon the defendant therefor; and if any demand has been made, the circumstances thereof.

Eighth. State whether or not you or your father, or either of you, or
both of you, were ever employed by the defendant to procure or
71 influence in his behalf legislation, by any secret, sinister, cor-
rupt, or immoral means. And further, whether or not you and your father, either, or both of you, ever procured, or attempted to procure, influenced, or attempted to influence, in behalf of defendant, any legislation, by any secret, sinister, corrupt, or immoral means.

Ninth. In his answer the defendant says, that in February, 1871, you proposed to him, with the view of securing Mr. H. L. Dawes' support, the employment of Mr. Gooch. State whether or not you expected or desired or believed that Mr. Gooch would use any secret, sinister, corrupt, or immoral means to secure said support. The defendant charges that the afore-stated proposal "had no other object than to obtain a portion of the expected allowance by Congress, by a false and fraudulent pretext." What say you to this?

72. Tenth. The defendant, in his answer, accuses your father and yourself of neglect of his case, inefficiency, failure to comprehend it, &c., &c. State whether or not, prior to the passage by Congress of the act for his relief, the defendant made any such charges to you or your father, or complained of your conduct of his case.

R. D. MUSSEY,
Sol'r for Pl'ff.

CROSS-INTERROGATORIES.

In the supreme court of the District of Columbia.

L. M. CHILD
vs. } 2365. Equity docket 11.
N. P. TRIST.

Cross-interrogatories to be propounded to Linus M. Child, of Boston, Mass., on behalf of defendant.

First. During the time referred to in the third chief-interroga-
73 tory, had your father any other associate in the practice of the
law than yourself? If yea, whom; and where is he now?

Second. If, in answer to the fifth interrogatory-in-chief, you say there was such an employment as is therein inquired about, then was said employment effected by a written correspondence; and, if yea, please annex the original letters on the subject. If you cannot, please state why, and annex copies thereof, which you can depose to as being true copies of the originals.

Third. In addition to the correspondence just inquired about, was there any contract between the parties in writing? If yea, please annex said contract to your answer.

Fourth. How many times did you and your father come to Washing-
ton on this business? How long did you stay here on each occasion?
At what place did you board and lodge while here?

74 Fifth. Did you, yourself, ever appear before any committee of
either branch of Congress to advocate Trist's claim? If yea,
which committee was it? How many times did you so appear, and at
what dates?

Sixth. Did you ever speak to any individual members of Congress in advocacy of Trist's claim? If yea, to whom, at what dates, and where?

THOMAS J. DURANT,
Solicitor of Defendant.

WASHINGTON, D. C., 19 *March*, 1873.

75 In the supreme court of the District of Columbia.

LINUS M. CHILD
vs. } No. 2365. Equity docket 11.
N. P. TRIST.

Deposition of Linus M. Child, witness for the complainant, being the complainant.

To the justices of the supreme court of the District of Columbia, holding an equity court:

The deposition within-below contained was written down by me from the statement of Linus M. Child, witness, produced, sworn, and examined before me on behalf of complainant, in the above entitled cause, pursuant to the commission hereto prefixed, the witness having first been duly cautioned to tell the truth, the whole truth, and nothing but the truth without favor or affection to either party. Each interroga-

76 tory was read to the witness and by him answered as herein set forth, before any following interrogatory was disclosed to him.]

EDWIN H. ABBOT,
Commissioner.

My name is Linus M. Child; thirty-eight years; Boston; attorney at law. My father and I were law-partners, and the suit was brought after his death by me both for myself and as executor of his will.

To the second interrogatory this deponent answereth: I am executor, and herewith produce copy of the letters testamentary therefor.

To the third interrogatory this deponent answereth: I was his partner from the year eighteen hundred and sixty-one till the time of his death, in August, 1870.

77 To the fourth interrogatory this deponent answereth: I am acquainted with him, and have been since shortly after the date of the letter received from him engaging my father as counsel, a copy of which is annexed to the bill.

To the fifth interrogatory this deponent answereth: My father was applied to by T. Jefferson Coolidge, of this city, nephew of the defendant, as I understood, to act as counsel for Mr. Trist in bringing the matter of Mr. Trist's compensation for services in negotiating the treaty with the Mexican Government, at the close of the Mexican War, before Congress. At first my father asked that he should be guarranteed for his expenses at least, in undertaking the case. It was, however, represented to him by Mr. Coolidge, that Mr. Trist was very poor and unable to advance any money at all, and that his friends would
78 hardly be willing to do so, on account of the peculiar character
of the claim and the length of time it had been standing. Then, afterwards, Mr. Coolidge stated that Mr. Trist would be willing to pay very liberally, if he was successful; but that, if he was not successful, there would be no pay whatever, not even for expenses. In consequence of this conversation, my father had some correspondence with Mr. Trist, which resulted in the letter above referred to. Afterwards my father went to Washington and saw Mr. Trist and made arrangements there that I myself should meet him, and I did meet him afterwards in Washington, and performed certain labor for Mr. Trist, in this case at Mr. Trist's request, made to me, personally, by Mr. Trist, and it was agreed by Mr. Trist and myself that I should do some things in regard to the case, and my father should do others; and from that time till the final issue of the case, we, my father and myself,
79 did work together, and after the death of my father, I continued
to manage the case with Mr. Trist's knowledge and consent, and at his request went to Washington and attended to his case there as the circumstances required, until the bill was passed through Congress. The original compensation agreed upon by Mr. Trist for my father's services and for getting the bill through Congsess, was twenty-five per cent. of the gross amount of the sum allowed Mr. Trist by Congress. I was partner with my father at this period, when the original agreement was made, and had my share in all cases in which he was employed, and rendered such assistance in all such cases as I was able, all of which Mr. Trist well knew and accepted and required. He used my services very freely during the whole case. It ended when we
80 got the bill through Congress, and the first specific work I did
was to spend considerable time with Mr. Trist at Washington, and afterwards in preparing in Boston by myself an elaborate state-

ment of the facts in the case, together with an argument which was given to Mr. Sumner, to be presented to the Committee on Foreign Affairs. The employment continued without cessation from that time till the bill passed Congress.

To the sixth interrogatory the deponent answereth: I can only add to my former answer, that I saw various members of the Committees on Foreign Affairs in both Houses of Congress, and also many prominent members of Congress, and presented the arguments on behalf of Mr. Trist, to the best of my ability, both at Washington and in other places.
My father did the same to other gentlemen, and we both of us
81 devoted a great deal of time and effort in presenting the case to
a large number of members of Congress.

To the seventh interrogatory this deponent answereth: There has been nothing whatever paid, either to my father or myself. After the bill had passed Congress I called upon Mr. Trist, and after congratulating him upon his success asked him if he had received the money. He said that he had not, but proposed to get it the next day. He then told me he had been advised by his friends not to pay what he had agreed to, and that he thought he should not pay what he had agreed. I asked him what reason he had for refusing to pay what he had agreed, and he said my father having died he didn't have the benefit of his services. I asked him if the bill hadn't gone through just as he wanted
it. He admitted that it had. I then asked what difference it
82 made, as long as he had got his case, whether my father or I got
it for him. He said he didn't want to talk about it any more,
but that he should leave it to Messrs. Hinckley and Coolidge, above referred to, and whatever they said he ought to pay he should pay. I told him that I had his written agreement to pay one amount, and that I did not see what assurance I had that he would abide by the decision or not. I thereupon left him and went to Washington. After mature deliberation and to save trouble I concluded to try to settle it in some way or other. I took the early boat to Alexandria next morning, went to Mr. Trist's house, and was informed that he had not yet come down stairs. I sent up my name. The servant came back and said he didn't want to see me. I told the servant to tell him that I would wait, that I was very anxious to see him to see if we couldn't make some arrange-
ment. She went up stairs and delivered my message, and he
83 screamed at the top of his voice, so that I could hear him very
plainly, "Tell him I won't see him. Tell him I never will see
him." I thereupon left the house and returned to Washington, made a written statement of my case, with the request that the money might not be paid over until I could take legal action, which General Butler deposited with the Comptroller. I immediately proceeded to procure an injunction restraining Trist from taking the money. I afterwards saw Messrs. Hinckley and Coolidge, told them I was perfectly willing to abide by their decision as to whether Mr. Trist should perform his agreement, and asked them to communicate the same to Trist, inasmuch as he refused to see me in regard to it. I gave this, in writing, to Mr. Hinckley, which Mr. Hinckley informed me he communicated to Trist, but Mr. Trist again refused to perform the agreement as to leaving the matter to Hinckley and Coolidge.

84 To the eighth interrrogatory the deponent, answering, saith: We never were so employed and we never did. We argued the case—presented the facts and arguments fairly and honestly to members of Congress, and in no way attempted to influence their votes except by convincing their judgments.

To the ninth interrogatory the deponent answereth: At the time mentioned I believe I went to Alexandria to see Mr. Trist, and during my interview the question arose as to whether it was necessary to employ any additional counsel to assist in the case. I said to Mr. Trist that if he desired to have additional counsel I should have no objection, but that the pay for his services, I thought, ought not to come out of the contingent-fee that had been agreed upon; that if he employed
anybody, Mr. Gooch, a lawyer, from Massachusetts, was then in
85 Washington, and I thought he couldn't employ a better person,
and that I understood that he was well acquainted with Mr. Dawes, and would be likely to have a considerable influence with him. We had previously been saying that as Mr. Dawes guarded the Treasury more carefully than anybody else he would be more likely to oppose this bill than any other prominent man, and Mr. Trist very well knows that I never suggested to him or anybody else that Mr. Dawes or Mr. Gooch would be guilty of anything except what was high-minded and honorable. I never, at this or any other time, had the slightest desire or purpose in any way or manner to use any sinister, corrupt, or immoral means to secure any votes on this bill. Mr. Trist assured me at this interview that he didn't think it necessary that any other counsel should be employed, and that he was entirely satisfied with the manner in which the case stood.

86 To the tenth interrogatory the deponent, answering, saith:
During the whole time that the case was pending my father and myself devoted a great deal of attention to it, did everything in our power to forward and prosecute the case, and previous to the passage of the act Mr. Trist not only never found any fault, but, on the contrary, frequently expressed himself satisfied with the case as it progressed, never intimated in any way but that the case was thoroughly understood, and agreed that the statement of the same prepared by me for presentation to the Committee on Foreign Affairs, should be used in preference to one that he had himself prepared. I annex hereto a letter received from Mr. Trist after my father's death, and also one received by me before his death.

(The commissioner annexed and certified Exhibits A and B with his initials.)

87 To the first cross-interrogatory the deponent, answering, saith:
At that time he had not. Previously Mr. Charles E. Powers had been connected with us and his name appeared on some of our letter paper. He is president of a horse-railroad in Boston.

To the second cross-interrogatory the deponent, answering, saith: The employment of my father was by letter, which letter is now in Mr. Mussey's hands in Washington. That is the only letter of employment to my knowledge, and I think I have no copy of it. I will attach it if I have.

To the third cross-interrogatory this deponent, answering, saith: I am unable to state exactly, as having a contract of this nature we kept no
account with Mr. Trist, and supposing Trist to be a man of honor,
88 I supposed if his bill was successful he would gladly pay what he
had agreed. To the best of my knowledge my father went to Washington four times and I went four or five times. I am unable to say length of time we stayed, but we stayed as long as there was any possibility of doing any good in the case. We stopped at such hotels as were convenient, at the National sometimes, sometimes at Willard's sometimes at the Arlington, I believe my father once staid a week. I can't say how long we staid the other times.

To the fifth cross-interrogatory the deponent, answering, saith: We did not. I did not appear before any committee, as a body. Mr. Sumner informed me that it was not customary, and that they did not give hearings on matters of that sort, and that the only thing to be done was to see the members of the committee separately.

89 To the sixth cross-interrogatory the deponent, answering, saith: I did speak to a good many wherever and whenever I could see them. I saw Mr. Sumner a good many times at his house. I saw Mr. Casserly. My father saw 7 or 8 other Senators; Mr. Cameron, Mr. Buckingham, and others. I saw Mr. Banks, Mr. Butler, Mr. Dawes, Mr. Woodward, and a number of other gentlemen, some in Washington, some in Massachusetts. I don't know when I saw each—at various times.

LINUS M. CHILD.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, Edwin H. Abbot, a commissioner for the district of Massachusetts, appointed by the circuit court of the United States for the first circuit, and the person named in the commission heretofore fixed, do certify that on the fourth and the fourteenth days of April current, I
90 was attended at my office in No. 13 Pemberton square, Boston, in said district of Massachusetts, by Linus M. Child, the said witness, who was of sound mind and lawful age, and the said witness having been by me first carefully examined and cautioned and sworn to testify the whole truth in the cause aforesaid, did answer to the interrogatories and cross-interrogatories put to him, and the testimony given by him was by me and by my clerk in my presence, reduced to writing in the presence of the said witness, and that he subscribed the same as and for his deposition in my presence, for the purpose of forwarding the same under my own hand to the court for which this deposition was taken with this certificate.

I further certify that I am not of counsel or attorney to either of the parties in the cause in and for which the said deposition was taken, nor in any way interested in the event of said cause.

91 I further certify that the delay in taking this deposition was caused by death in the family of the commissioner, and necessary absence therefor.

In testimony whereof, I have hereunto set my hand and seal this fourteenth day of April, in the year of our Lord eighteen hundred and seventy-three.

[SEAL.] EDWIN H. AB'OT,
Commissioner of the Circuit Court of the United States
for the District of Massachusetts.

92 *Exhibit to compl't's testimony.*

ALEXANDRIA, VA., *Dec.* 16, '69.

LINUS CHILD, Esq.,
27 Tremont Row, Boston, Mass.:

MY DEAR SIR: Your favor of the 13th came to hand yesterday, and I was glad to receive it, for you have rightly understood from my friend Mr. T. Jefferson Coolidge, that I shall be glad to avail myself of your services in the case which I purpose presenting for the consideration of Congress, on the terms referred to, namely, your compensation to be

one-fourth part of whatever amount may be awarded to me by Congress. In writing to Mr. Coolidge, I added—referring to intimations repeatedly made to me, that the case, if properly brought to the public notice, could not fail to elicit manifestations of liberality from such bodies as boards of commerce, &c., &c., in view of the benefits experienced by business in all its branches, and directly shared in by every business man throughout the country, from the treaty effected by me when everybody was expecting an indefinite protraction of the war—
93 that your fee shall be enhanced by the same share of anything which may in this way result from the presentation of the subject to Congress. True, many years have elapsed since those benefits were fresh in the minds of those who participated in them (some of whom, I was told by those who knew) were thereby snatched from impending ruin. Still, despite this long lapse of time, there may yet remain a possibility of some result of the kind.

I expected to have several hours to-day for writing to you, but my time has unavoidably been engrossed by other things, till near the hour for the closing of the mail. I will add only, do not see Mr. Sumner till I apprise you of what has occurred between us (in March '67) in regard to this case. You advise a "brief memorial." Therein lies a difficulty which has proved insuperable to myself. If your time allows, I should be much obliged for a suggestion (in the shape of a rough draught, or of heads merely if you have not time for a draught) as to what the memorial should say.

Very truly and respectfully, yours,

N. P. TRIST.

94 *Exhibit A to compl's testimony.*

ALEXANDRIA, VA., *May '70.*

LINUS M. CHILD, Esq.,
27 Tremont Row, Boston, Mass.:

MY DEAR SIR: I have kept you waiting to hear from me much longer than I expected, when I wrote you acknowledging receipt of yours of 29th ult'o, (left at National,) and saying that I was writing to Mr Reverdy Johnson, one of the Senators of that day, who is still living. He has replied in very kind terms, that he will with pleasure write a letter expressing the high appreciation then and now entertained by him of the public service rendered by me. John P. Hale is another survivor. He gave a very earnest support to the treaty, and would doubtless express full concurrence with Senator Benton. With a view to writing to him, I asked you where is he? From your not replying, it has occurred to me as possible, that, to save time, you have got some one to
95 write to him or have done so yourself. I said also, that as regards Mr. C., you would have to avail yourself of your acquaintance with his son-in-law, basing your movement on the ground that he (C,) voted for the treaty.

Neuralgia in the face must be my apology for tardiness, also for the bulkiness of the enclosed, which would have been much less "tremendous" had I been in a state of nerve permitting me to do my best in the way of condensing, which is but poor at best. My son, Dr. Trist has just come down from W., to ask for some of my documents, that his friend, (and a very earnest friend of mine,) Mr. Hitchcock may post himself thoroughly. He had written to H. that my case was at last before Congress, where H. has for years been urging that it should be brought, and H. has come in from Omaha (his home,) and is going to put his shoulder to the wheel vigorously. Pity you are not here to concert with him.

Y'rs,

N. P. TRIST.

96 Mr. H. is a man of large influence out there, my son said. H. says the case must be pushed through at once, and he is going to work right away, &c.

Exhibit B, to compl'ts testimony.

ALEXANDRIA, VA.. *Dec'r 3, '70.*
(Cor. Water & Wilkes st'ts.)

LINUS M. CHILD, Esq,
National Hotel, Washington, D. C.:

MY DEAR SIR: You telegram to hand. I was just going to despatch a letter to you at Boston, asking you to come as soon as your business would permit. Sorry to have to put you to the trouble of coming down here; waste of your time, too. The more annoying this necessity to me, because of my feeling so very well, and so very strongly disposed to start off every morning on a 5 or 6 mile tramp at double quick instead of conforming to the doctor's positive requirement to keep quiet
and confine myself to my sofa, as the peremptory condition
97 upon which alone my leg can get well, and the surgeon's knife and
saw kept off from it. It is one of those "difficulties" which old men are subject to, from weakening of the coats of the blood-vessels, and so letting out the serum, &c., &c. In fine the formation of sores, which are very refractory to the healing arts. In my case, from being at first a mere stain of the skin, about the size of a half dollar, and so remaining for many months, it has now become a sore, looking and feeling like a bad burn, and extending all round my ankle, seven or eight inches up.

Hoping to see you to-morrow evening, or at latest next morning, for we have no time to lose,

Yours, truly,

N. P. TRIST.

P. S.—Hourly ferry-boats (very good ones) ply between the foot of 7th st., Washington, & King st. Alexandria, from 7 a. m. to 6 p. m., in both directions.

98 But for our only spare rooms being occupied by a visitor, I should gladly invite you to come down and occupy it. The "Mansion House" is, however, a very good hotel, on Fairfax st., three squares from steamboat landing. This house is one square from Fairfax st., and 7 or 8 minutes walk from hotel.

Testimony of B. Perley Poor for compl't.

In the supreme court of the District of Columbia.

L. M. CHILDS
vs. } In equity. 2365.
N. P. TRIST.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that, at an examination of witnesses begun and held on the 22d day of April, A. D. 1873, when within depositions were taken, I, T. D. Anderson an examiner in chancery, did cause 99 to be personally present at the office of R. D. Mussey, in the city of Washington, in said district, Ben: Perley Poore, to testify on the part and behalf of the complainant in a certain cause now depending in the supreme court of the District of Columbia, wherein L. M. Childs is the complainant and N. P. Trist is the defendant.

In the supreme court of the District of Columbia the 22d day of April, 1873.

L. M. CHILDS
vs. } 2365. Equity docket 11.
N. P. TRIST.

Deposition of B. P. Poore, for plaintiff.

Met pursuant to notice to take testimony for the complainant; present, Mr. R. D. Mussey, solicitor for the complainant, and Mr. T. J. Durant, for the defendant.

Whereupon, B. P. Poore, a witness of lawful age, a resident of West Newbury, Massachusetts, produced, sworn, and examined by and 100 on the part of the complainant, deposes and says as follows, to wit:

My occupation has been that of an officer of the Senate, and a newspaper correspondent. I am personally acquainted with Mr. Childs, the complainant and know Mr. Trist only by reputation. I was very well acquainted with Linus Child, the father of the complainant.

Int. Since you have been an officer of the Senate, do you remember a claim of Nicholas P. Trist for compensation for diplomatic services in Mexico pending before that body?

An. I do.

Int. Do you know whether or not in the preparation, presentation, and prosecution of that claim the late Linus Child, or the complainant, rendered any professional service? If so, please state your information.

An. Mr. Childs, the father, having been an old friend of mine in Massachusetts, used to make my room at the Capitol, his place 101 of rendezvous, and used to talk very freely with me about matters in Congress, in which he was engaged as attorney. I saw him prepare, in my room, papers connected with this case; and my memory is fortified by my having procured for his use, from the office of the Secretary of the Senate, public documents containing information bearing on this case, from which he made extracts and I aided him in verifying the same. I also obtained for him a list of Senators, on which to check the names of those with whom he had conversations, having suggested to him that this was the only way in which he could thoroughly canvass the Senate.

BEN: PERLEY POORE.

Sworn to and subscribed before me this 22d day of April, 1873.

T. D. ANDERSON,
Examiner in Chancery.

102 *Testimony for the defendant.*

Deposition of Phineas W. Hitchcock, produced, sworn, and examined on behalf of the defendant, taken before A. S. Worthington, examiner in chancery.

SATURDAY, *January* 25, 1873.

Pursuant to agreement met at the office of Thomas J. Durant, esq., No. 223 4½ street, northwest, Washington, D. C., at three o'clock p. m. R. D. Mussey, esq., appeared for the plaintiff. Thomas J. Durant, esq., appeared for the defendant.

PHINEAS W. HITCHCOCK, a witness produced, sworn, and examined on behalf of the defendant, being examined by Mr. Durant, counsel for the defendant, says, on direct-examination:

103 My name is Phineas W. Hitchcock. I am forty-two years of
age, and reside at Omaha, Nebraska. I am a Senator of the United States from Nebraska.

Q. How long have you been in the Senate?

A. It will be two years the 4th of next March.

Q. Are you acquainted with the parties to this suit?

A. I know Mr. Trist; have met Mr. Childs, and have a very slight acquaintance with him.

Q. Before you were a Senator did you not serve as a delegate?

A. I did, for two years.

Q. Did you at any time during your service in Congress meet with Mr. Child here in Washington?

A. I think not, sir.

Q. Did you ever meet with him here in Washington while you were in the Senate?

A. I am not certain about the date of my interview with him at Alex-
andria; it was after the passage of the bill in the Senate and be-
104 fore its passage in the House. I refer to the bill for the relief of
Mr. Trist.

Q. Were you a member of the Senate at the time the bill passed the Senate?

A. I should rather look at the record about that. (Witness having examined the 16th volume of the Statutes at Large, says:) I was in the Senate at the time the bill became a law, to wit: the 20th of April, 1871.

Q. Will you state if at any time you had had any acquaintance with Mr. Child or any intercourse or conversation with him about that bill?

A. I met Mr. Child at Mr. Trist's house in Alexandria, Virginia. This was, I think, in the spring of 1871. He was engaged in conversation with Mr. Trist when I entered the room, and the subject-matter seemed to be a proposition or request on the part of Mr. Child that Mr. Trist should employ Mr. Gooch of Massachusetts to assist in prosecuting or
passing his bill through the House of Representatives. He wished
105 Mr. Trist to agree to pay Mr. Gooch five hundred dollars if it
passed; and desired him to employ Mr. Gooch because of his influence with Mr. Dawes. Mr. Trist appealed to me to know if I thought such a thing necessary or advisable. I replied that I knew Mr. Dawes and believed him an honest and candid man; that I thought his claim was just; that I would call Mr. Dawes' attention to it and I thought it unnecessary for Mr. Trist to employ any one for the purpose indicated.

Q. Was that the sum of what passed?

A. Yes, sir.

Q. Was that the only occasion on which you met Mr. Child at Trist's house?

A. I think it was.

Q. Do you know anything further of Mr. Child's connection with this bill or its passage, or of any efforts that he made in and about Congress or with any of the members about it?

A. I think not. I think I know nothing about it. You mean Mr. Childs, jr.,

106 Q. The one you saw at Mr. Trist's?

A. Yes, sir.

Q. State whether you were on the committee before which this claim came in the Senate?

A. I think not. I think it was the Committee on Foreign Affairs. I am not on that committee. I have known Mr. Trist for many years.

Q. Are you acquainted with the elder Mr. Child?

A. I have met him I think but once.

Q. Had that meeting any reference to this claim?

A. I had some conversation with him in reference to this claim at the Capitol, in the lobby of the Senate.

Q. Was that subsequent to your becoming a member of the Senate?

A. It was before that.

Q. Do you know anything else that you can now call to mind in regard to the action of Mr. Child, father or son, touching the advocacy of this bill before Congress. If so, please state it fully, whether it is for or against Mr. Trist.

107 A. I know that Mr. Child, the father, at the time I speak of
when I met him in the lobby told me he had urged Mr. Trist's case upon the attention of Mr. Sumner, who was chairman of the Committee on Foreign Affairs at the time.

Q. Did he then or at any time make to you any other statement of his efforts or action?

A. I remember of none.

Cross-examination:

Being cross-examined by Mr. Mussey, complainant's solicitor, he says:

Q. Do you know anything of the contract between Mr. Child, father, and Mr. Trist, relative to the services of Mr. Child in this behalf.

A. I know nothing of my own knowledge.

Q. Have you heard Mr. Trist say anything about it?

A. Yes, sir.

Q. Before or since the institution of these proceedings?

108 A. Since.

Q. How large was your acquainance with Mr. Child, the father?

A. I don't remember of having ever met him, except on that one occasion.

Q. And he spoke to you about the matter knowing you to be a friend of Mr. Trist's?

A. Mr. Trist introduced him to me. They were together at the time.

Q. That, I understand you to say, was in the Congress prior to the one in which the bill passed?

Q. I think it was.

Q. Relative to this proposed employment of Mr. Gooch, can you state any more definitely than you have precisely what Mr. Gooch was to do—what it was proposed he should do?

A. I think I have stated the general and specific idea I obtained. He
said Gooch was influential with the Massachusetts delegation
109 in general, and with Dawes in particular, and he desired Mr.
Trist to employ him and pay him five hundred dollars contingent upon the passage of the bill.

Q. Did he or not say whether that was to be in addition to the amount promised his father and himself, or whether it was to come out of that sum?

A. I did not hear him say anything on that subject.

Q. Was there any intimation on the part of Mr. Child at that time that Mr. Gooch was to use anything more than fair and legitimate representations of Mr. Trist's case to Mr. Dawes and the other members of the Massachusetts delegation?

A. No, sir; there was nothing of that kind conveyed more than I have stated.

Q. Mr. Gooch was formerly a member of Congress from Massachusetts?

A. I believe so.

PHINEAS W. HITCHCOCK.

Sworn and subscribed to before me this 30th day of January, 1873.

A. S. WORTHINGTON,
Examiner in Chancery.

110 *Deposition of John W. Burke, for defendant, taken before Examiner J. O. Clephane.*

JOHN W. BURKE, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

First general interrogatory by the commissioner. Please to state your name, age, residence during the past year, and your occupation.

Answer. My name is John W. Burke. My age is 48. My residence the past year has been Alexandria, Va. My occupation is banker and broker.

In response to interrogatories by Charles W. Horner, counsel for defendant, the witness says:

111 Q. Will you state what you know about this case in your own way?

A. About 18 months or two years ago Mr. Trist sent to my house to request General Hitchcock and myself to come over there. When I got over there Mr. Trist, after an introduction, remarked that Mr. Childs wanted him to give him five hundred dollars for a friend of Mr. Dawes, and General Hitchcock remarked, looking at Mr. Child, "I know Mr. Dawes, and I think, or I know him to be an honest man." Mr. Childs remarked "I do not mean to be understood as saying that Mr. Dawes will get any of that money. I only mean to say that Mr. Dawes is a friend of his." I think the gentleman's name is Gooch, and that he would be likely to favor anything that would be in his interest." That is all I know about this matter.

Q. Where was this conversation?

112 A. In Mr. Trist's parlor, in the presence of these gentlemen. Probably some of the ladies were present also. But I know that General Hitchcock was present, Mr. Trist, Mr. Childs, and myself.

Q. It was at Alexandria?

A. Yes, sir.

Q. There was no other person present but these you have mentioned?

A. I think some of the ladies were present, but I am not sure.

Q. Can you tell us who heard the conversation?

A. I do not know positively who heard the conversation.

Q. Who could have heard it, of those present?

A. Mrs. Trist could have heard it. I think she was present, but I am not certain. That is the only interview I had with Mr. Childs. I have never seem him before or since. He has been in Alexandria, I believe, since, but I have not seen him.

Cross-examination waived.

JOHN W. BURKE.

Sworn and subscribed before me this 30th of Jan'y, 1873.

JOS. O. CLEPHANE,
Examiner in Chancery.

113 *Deposition of Nicholas P. Trist, for defendant.*

Nicholas P. Trist, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

First general interrogatory by the commissioner. Please to state your name, age, residence during the past year, and your occupation.

Answer. My name is Nicholas P. Trist. My age is 73. My residence the past year has been Alexandria, Va. My occupation is postmaster at Alexandria.

In response to interrogatories by Charles W. Horner, counsel for defendant, the witness says:

Q. Please begin and tell us the whole story in your own way.

A. Not to go too far back, after my return from Mexico from
114 my Mexican mission, in the year 1848, circumstances had arisen that determined me not to present any claim or account to the Government. I had, in consequence, received less than I was entitled to, even at the rate of pay attached to my mission. I determined, however, to let the matter drop, never to say a word about it to anybody. At that time I had some little property, but that property I lost through fire. It was not insured, and I was impoverished by the loss that I then suffered. I was reduced to real want. I had intended to go to the city of New York and establish myself there in the practice of the law as a chamber counseller, but that required means, which I no longer possessed, and I was driven about from pillar to post in search of some employment that would give me bread. Finally I became, in the very course of seeking employment, acquainted with the president of the Philadelphia, Wilmington and Baltimore Railroad Company,
115 Samuel M. Felton. I was then endeavoring to get a patent-bar—a fire-bar for furnaces—introduced into use, and if I had been successful, it would have made me independent. I had had it tested most thoroughly and had induced friends to invest money in it. I devoted myself to that for about a year, going about among firemen and others, and where different furnaces were, and made myself just like one of the firemen. I was completely successful in regard to the bar, but I found that I could not get it into use in such a way as to make it pay, and gave it up for want of means to further it. Under these circumstances a vacancy happened in the office of the Philadelphia, Wilmington and Baltimore Railroad Company, and the president, who had become acquainted with me, offered it to me. I accepted the position of clerk in the service of that company. I then became paymaster of that company. A personal intimacy soon arose between Mr.

116 Felton and myself, which led to my relating to him, in answer to his inquiries, the history of my Mexican mission. He urged me to bring forward a claim before Congress. I told him I had no claim to bring forward, and I did not consider myself entitled to a claim; that was not my position. I told him I had made a surrender of everything, and determined never to make any demand upon the Government. He reasoned with me about my position. He said I was getting old, and would be unable much longer to continue to earn my bread. Finally, I made up my mind that I would present the case to Congress, not as a claim, but just as a statement of the case, and let Congress determine whether I was entitled to anything.

(Mr. Mussey objects to all the preceding testimony as being entirely irrelevant.)

WITNESS. I had received, long before that, a letter from Mr. 117 Thomas H. Benton advising me to bring forward my claim. That was some years before this; but I just laid it aside. I had made up my mind that I never would. In consequence of Mr. Felton's advice, however, I did, in the winter of 1866–7, draw up a memorial. Mr. Felton was a very influential man with members of Congress, and every one that he spoke to on the subject said, "Let him bring it forward, and we will act at once."

(Mr. Mussey objects to the statements being given in evidence.)

WITNESS. I came on in March, 1867, with that memorial. It was a long one. It contained a succinct history of my mission. I showed it to several Senators and to some of the members of the House. One of them was Judge Kelley, to whom I brought a letter of introduction from Henry C. Carey; another was Senator Sumner; another was Senator Cattell, from New Jersey, all of whom, with the exception of Mr. 118 Sumner manifested a great deal of interest. He did not manifest any such interest, but I saw at once that he was pressed with business, and had not time to attend to anything. The others gave me a great deal of encouragement, but it was evident to me that nothing could be done that session, as the members of both Houses were anxious to adjourn and go home, and they had all this great work of reconstruction on their minds. Therefore I saw it was no use to attempt to do anything during that session. So I returned, determined to come back the following year. The next year I determined to come back the year after that. Finally my health became such as to oblige me to retire from the position I held in the office of the railroad company. Just then a friend in Boston suggested that I should employ—a friend who knew that I had what he called a claim, though I never designated it so—he sug-119 gested that I should employ a person that he could recommend, to follow the business up. Before I had replied to that suggestion, having pretty well made up my mind to follow the advice—that is to employ somebody—Mr. Hinckley, the president of the railroad received a letter from the person to whom this Boston friend of mine had referred, whose name was unknown to me, and which letter was handed to me by Mr. Hinckley, the president of the railroad company, who succeeded Mr. Felton. Knowing that Mr. Hinckley was pressed with work, as all men in such a position are, when they are fit for it, I said, "Do not trouble yourself with answering this letter. I will reply to it." That reply I wrote. It is now on file, as also is the original letter telling him that my wife had persuaded me to allow her to write to an old personal friend of mine, which friend was Robert Dale Owen, to see 120 whether he could not take charge of the case, but as his engagements did not admit of it, in my reply I said that I would avail

myself of his offer in case this friend of mine declined to serve. That
led to my engaging the service of Mr. Linus Childs, the father.
This Boston friend, when he had made the suggestion, said that the
charge of person to whom he referred *to* would be twenty-five per cent.
He did not then mention the name of the person. So in my letter to
Mr. Childs, either the first letter or subsequent one, I accepted his offer
of those terms, agreeing that he should have twenty-five per cent. of the
amount awarded to me. My object then was that my memorial—very
succinct in form, as drawn up by myself—should be presented to Congress,
and that the matter should be followed up by this person, Mr.
Childs. That is the only service I expected of him. I came to Alexandria
in very ill health, the general impression being that I
121 should be obliged to go to Florida, and live there during the
winter. My health, however, improved, and I remained in Alexandria.
I expected Mr. Childs would come on to Washington early
during the session of Congress, and attend to the business. I waited
and waited, until finally early in March I had a telegram from him to
meet him at the National Hotel. I came up the morning appointed,
found him in the sitting-room there. He took me up into his room, and
produced all the papers which I had sent him in November previous to
make him acquainted with the case. These papers were very voluminous.
When I sent him these papers, in my first letter I said to him that on
examining them he would be able to satisfy himself as to the character
of the case; that the perusal of them would preclude the necessity of
Mr. Hinckley or Mr. Felton, telling him what they thought of it. When
I got to the room there were these papers. This was in March,
122 1870. I soon found from his inquiries that no use whatever had
been made of the papers that had been sent to him. He really
did not understand the case. All that he knew about it was, that I had
been to Mexico in a diplomatic capacity. That was the impression produced
on my mind. Then he set about drawing up a memorial which
I had by writing requested him to do. I wanted him to draw up a succinct
memorial, such as would suit his views. He then commenced in
March to draft a memorial which covered about two pages of foolscap.
On his reading it to me, I saw that it was a thing I could not sign. It did
not suit me at all. It put the subject not in its true light, because in
the memorial which I had sent him for perusal, I had stated expressly
that I did not advance any claim; that I merely stated the case, leaving
to Congress to judge whether, under the circumstances, any-
123 thing was due to me for the service I had performed without
authority. I will state that my mission to Mexico I divided into
perfectly distinct periods, which had always been in my mind from the
beginning. One of them was a period during which I acted authoritatively
as the authorized agent of the Government, and the other one
in which I acted in defiance of the instructions of the Government after
having been stripped of all shadow of official power and authority.

The service rendered by me in the country was in the latter capacity on my own hook and as Nicholas P. Trist, an American citizen.

This Mr. Childs was an old gennleman evidently with a kind heart,
and well disposed and I was embarrassed in consequence. He drew up
a paper which I could not sign. I asked him for the paper, and as I
had read it over I dictated to him what as far as I could accept.
124 It was the substance of what I had written, but differently expressed.
He then asked me to sign it and to go up with it to
Congress. It was not exactly then, as it stood, what I should have
written myself, but I did not want to depart more than was abso-

lutely necessary from his ideas. In parting with him at the National Hotel he said he would go up to see Senator Sumner and ask him to present it. I lingered in town and called again at the dinner hour found him at dinner at the National Hotel. He then told me that he had given the paper to Senator Sumner who had promised to present it, but that he had made up his mind to go back to Boston that evening; that he would soon return with his son of whom I then for the first time heard. He represented him as a more active and efficient man. He said that if they did not both come, that his son would. About a month after that, at the date which I mentioned in my reply, I had either a note or a telegram appointing a meeting at
125 the National Hotel with the son, whom I then for the first time
met there. He brought the papers again with him—all these voluminous papers. There was a great big roll about seven or eight inches in diameter. In conversation with him I found the papers had received no more attention from him than they had from the father.

After some conversation, he proposed that we should go up to the Capitol together. We did so, and after knocking about, went into the supreme court-room, the supreme court was not then in session, and wrote as the result of our conversation what he called an argument. We then returned to the hotel. It was not the thing at all, that suited my views, but I saw the case was in the hands of himself and his father, and I let it go. I caused him to make various corrections as to statements. I then left him. He told me that he would take it to Senator Sumner. I came back the next morning and found a note
126 for me, saying that he had decided to return to Boston. The
impression left on my mind, always, was that the case would be followed up actively. The next I heard was a summons about a month after, either in May or in June, to meet the old gentleman again. I did so. We went up to the Capitol together, and into the Senate reception-room. He then called out one or two Senators, and introduced them to me. They were very friendly and expressed themselves as disposed to aid me. I recollect one of them, Senator Buckingham, I think it was, who said to me, "Mr. Trist, we have every disposition to do you justice." Old Mr. Childs then went about among the Senators and returned making reports of the remarks of some of them. Among others, he approached, of course, as he was in duty bound to do, the members of the Committee on Foreign Relations, to whom the case had been referred. Senator Casserly said "Why that man, of course; our
127 State is indebted to him for admission into the Union. Of course
we are disposed to do all we can in justice to him."

The result of that visit was another return to Boston. So that the old gentleman was there one time to the best of my recollection. He either returned that night or the next morning to Boston. Then I heard nothing more of it until Senator Sumner presented a day or two before the adjournment of Congress, a favorable report in my case from the Committee on Foreign Relations, which report he sent me a copy of.

My health then became desperately bad. It was thought I was going to die in consequence of my having exposed myself up here in Washington one day injudiciously. I had an attack and I was lying at death's door as the doctor thought; but I did not think so. I knew I was very ill for about twenty-four hours, but after that I felt sure that I was going to get well, which I did. I, however, had to go to the mountains to get rid of the suffocating atmosphere of Alexandria. It
128 was a remarkably hot summer. I went to Rawley Springs. Just

before setting out for Rawley Springs, I received a letter from old Mr. Childs, which is on file, expressing his disappointment at the tardiness of this report, but that he would return early the next session of Congress, and follow the business up actively.

Now it occurs to me that the first letter that I wrote for a long time after falling ill was the reply to that letter, which I then, against the expostulations of my family wrote. They remonstrated with me because of my feeble condition of health. I felt, however, that it was due, situated as I was, to write him, if for no other purpose, to put into his hands as proof of the engagement between us, a document which came into my possession in the way I will state. I claimed that this action on my part shows how far there was any disposition as far as I was concerned to defraud him or withhold from him his dues. On the visit
129 of Linus M. Child, the son, as I have stated, he brought back all
of these voluminous papers from Boston. These papers had twice made a journey to and from Boston. They had once been carried back by the father. As I was taking leaving of Linus M. Child on the evening of his arrival at the hotel, I had the same bag, which I generally carried for the sake of convenience. I said to him "it is not worth while to be carrying these papers to and fro. I saw that he made no use of them, and I had been put to a great deal of trouble about them in having copies made and so on. I therefore said to him it is not worth while to carry these papers to and fro. They will be here always if you want to refer to them, so I will take them with me. I then put them in the bag with his consent. After reaching home I found that they contained not only the papers I had sent him by Express for the purpose of having him inform himself in regard to the case, but they
130 contained all my letters to the father. Among the letters was one
proving the agreement on my part to give him twenty-five per cent., and in this letter in reply to Linus Child, the father, from Alexandria, acknowledging his July or August letters, I said "I enclose herein a letter, which ought to remain in your possession." I did not know but what I might die and a question might arise in regard to this title. That is the way, in which Linus M. Child now happens to be in possession of the only proof that exists of my having agreed to pay the father twenty-five per cent. for his services. Before leaving Rawley Springs, in the valley of Virginia, I received a Boston newspaper with a short obituary notice of Linus Childs, the father, who had died suddenly after a very short illness. Thereupon, my wife, whose character precludes all idea that she can be wanting in proper feeling on any subject, observed, "Well, at least, you are relieved from that plague,"
131 which shows the impression that had been made on my family in
consequence of my having committed my business to old Mr. Childs. I felt that it was an unfortunate connection, from his inefficiency. I said, "No; as I have allowed his son to become connected with the business, it would be unfair for me to consider the connection at an end by the death of the father."

Congress met the next December. I had returned to Alexandria, of course, my health greatly improved. I had another summons to meet Mr. Linus M. Childs, which I was unable to respond to from a lameness that kept me in the house. He came to Alexandria, promising to return to Washington from Boston before the Christmas holidays and push the matter. I lay at home confined to the house by this painful lameness. It was a dangerous one in some respects. There I was waiting
132 and waiting to hear something from Mr. Childs, but I could not
do so. The month of December passed away; January came.

It was a short session of Congress. I then wrote to this friend in Boston. I had taken it for granted that some accident must have happened to Mr. Childs which had incapacitated him from writing to me. I wrote to this friend in Boston inquiring what could have become of him. That letter or the contents of the letter having been communicated to Linus M. Childs, I received from him a letter which is on file, apologizing for not writing to me, he stating that pressure of business had prevented him doing so.

In passing over intermediate things as unimportant, I come to the passage of the bill. The bill had been reported to the Senate in my favor. After its passage Lewis M. Childs again came to Alexandria,
the bill having then come before the House—that is to say, hav-
133 ing been sent over to the House from the Senate, and taken up
in that body. Linus M. Childs came down to Alexandria about the 20th day of February, 1871, and there stated to me either that he knew or that he feared that the bill would be voted against by Mr. Dawes, chairman of the Committee of Ways and Means. I said, of course, from what I knew of Mr. Dawes' character, he will vote against it, unless he understands it is a case to be voted for. It is what I would do myself, unless I was informed of the merits of the case. He added, however, that if I would allow him to promise to a friend of Mr. Dawes—Mr. Gooch—$500, in case the bill passed, he thought he could secure Mr. Dawes' vote. At that I shook my head. I said Mr. Dawes is an honest man. I cannot conceive of any such proceeding in connection with him. Just at that moment my little grand-son called out to
me. He had come over from his father's house with a message
134 to me that Mr. Hitchcock had come to visit him and me. Mr.
Hitchcock is now a member of the Senate from Nebraska. He has been elected since. He had been exceedingly friendly to me, from having become acquainted with my son, Dr. Trist, now of Baltimore. Quite an intimacy had sprung up between Mr. Hitchcock and my son while Mr. Hitchcock was a delegate in Congress from Nebraska; long before Mr. Felton had urged me to bring the case before Congress, or rather urged it upon my son, for I had never seen him up to that time. It seems, however, that he had recollected my case, appreciated my course, and felt a warm interest in me, which warm interest he manifested upon becoming acquainted with me in reference to this very bill; for although he was not a member of Congress then, he was in
Washington and interested himself by explaining the bill to mem-
135 bers of Congress. I sent my grand-son back, saying to him, "Go
and ask your father and Mr. Hitchcock to come over here," which they did immediately. I introduced them to Mr. Childs, and said to them what Mr. Child had said to me, whereupon Mr. Hitchcock fixed his eye upon Mr. Child in a manner which I never saw one man look at another before, which look lasted some time, until it made me quite uneasy. He broke his silence by saying, "I know Mr. Dawes, and believe him to be a gentleman. Thereupon Mr. Childs disclaimed all idea that any part of the money was to go to Mr. Dawes, but that his vote might be influenced by friendship and confidence in Mr. Gooch. I thought at the time, and might have given expression to the thought, that Mr. Gooch must be a strange friend to take himself money for influencing Mr. Dawes' vote as a member of Congress.

As well as I recollect, that session of Congress terminated with-
136 out the bill having been acted upon in the House, which occa-
sioned the necessity of its being taken up again in the Senate, which was accomplished through the exertions of the chairman of the

Committee on Foreign Affairs, Mr. Sumner, and the bill went down to the House again and was passed. The bill passed early in the session; somewhere about the 2d of April, 1871. Upon becoming informed of the passage of the bill, I observed to my family, "Now Mr. Linus M. Child, although the pressure of his engagements was always such as to throw upon me the laboring-oar of getting friends to explain the merits of the case in Congress, he will be here very soon to look after his money."

Well, earlier than I expected he came. It was Sunday evening, April 23, that Mr. Linus M. Child made his appearance at my house. I was still very lame, quite disabled by lameness. He inquired whether it would be necessary for me to go to Washington to draw the money.
137 I told him no, but that I was not yet prepared to settle with him.

I considered that inquiry as preliminary to an offer to draw the money himself. I then stated to him the fact that friends of mine who had been acquainted throughout with the course of the business, with the trouble and anxiety which it had given me, had expostulated against my considering myself bound to him to pay what I had agreed to pay for his father's services; that these friends had said that it was a case to be left to arbitration to appraise the value of the services that I had received from them, the father and the son, but that I had not adopted that view of it; I had not made up my mind at all, but that I had made up my mind to pursue one course, which was to make a statement of the facts of the services that I had received from them to the two gentlemen who had been instrumental in my employing them, Mr. Jefferson Coolidge of Boston and Isaac Hinckley of Philadelphia; to have a
138 statement of the facts made to them, and to have them decide
whether they considered me bound in equity, in law, or in justice to make good that payment. That if they said yes, that was their opinion, it should be paid to the last cent; but if their opinion accorded with that of other friends who had urged me not to consider myself bound to do it; in that case the matter must be left to arbitration. He seemed very much disappointed at this course, and made some remarks of not very seemly character. He wanted to know what assurance he could have that I would abide by what they said, inasmuch as I now refused to abide by my own written promise, he forgetting how that written promise came into his keeping. It got into his hands through my scrupulousness in sending it back to them that there might be no trouble on the subject in the event of my death. In reply to that
139 remark, I said that he would soon see; that he would not be
kept long in suspense. He asked me when I would write to them. I told him immediately, whereupon he took his departure, after making some remarks which left the impression on my mind that he was going to wait until they had decided. My determination on that subject was so positive that, although Mr. Burke, as a business, man urged me to draw the money at once, and to keep it in my own hands, I said most positively, "No; I will draw three-fourths of it. Of course the whole must be drawn from the Treasury, but I will draw three-fourths of it; draw it in two sums, one the sum of three-fourths, and the other sum of one-fourth which shall be placed on deposit out of my reach and control." I intended to send it to New York to be deposited to the joint credit of Jefferson Coolidge and Isaac Hinckley, and that would have been the course pursued but for circumstances which I am now
140 about to relate. As I have stated, that visit from Linus M. Child
was on Sunday, the 23d of April. That same evening I commenced to draft a letter to Mr. Hinckley and Jefferson Coolidge. I was

engaged in writing that letter when Mr. Burke, whom I had employed to attend to its passage through the Treasury, came down and stated to me that the First Comptroller, on application of General Butler, had refused his signature to the warrant.

(Mr. Mussey interposed an objection to this testimony as hearsay.)

He urged me immediately to write to the Comptroller on the subject to demand his reasons for refusing, if he had refused. That letter was replied to by his saying that he did refuse.

Mr. MUSSEY. Have you the letters?

WITNESS. Yes, sir; they are on file.

141 Mr. MUSSEY. I do not recollect of seeing them on file, and I must therefore object to the statement of the contents of the letters, unless the letters themselves are produced.

Witness, resuming, said: Mr. Burke, who went to the Treasury on his own business as well as on this, came back to me saying that the Comptroller had intimated to him that I could draw three-fourths of the amount if I saw fit. My reply to him was, "Not a cent. This is a most audacious usurpation upon the part of the Comptroller, and the whole amount shall remain there until that point is settled." But Mr. Burke came back saying that it was recommended to me by a friend that he had spoken to that I should draw three-fourths of the money.

(Mr. Mussey objects to all of this conversation by Mr. Burke.)

142 Thereupon I wrote to the Comptroller, and in stating my consent to receive three-fourths, entered a strong protest against it at the same time. That is to say, that the matter should be arranged in this way: that a warrant to me should be countersigned properly, a warrant authorizing the payment; and that the payment should be made in two drafts, both to my order, and one of which drafts drawn to my order should remain in the custody of the First Comptroller of the Treasury until he deemed it compatible with his legal duties to deliver it to me. Immediately a suit was instituted by Linus M. Childs, notice of which was published in the papers. My attention was called to it in the papers, and after some delay on my part, because I thought that no such suit could be instituted under such circumstances, I entered my defence. My answer is on file now.

143 Cross-examination by Mr. Mussey:

Q. In the earlier part of your examination you referred to a letter from Thomas H. Benton?

A. Yes, sir.

Q. Have you that letter?

A. I have no doubt I have it. I have no doubt it is among my letters. I repeatedly made copies of it, and I have no doubt the original is in my possession.

Q. As I understand the nature of your defence to this action, as set up in your testimony and your answer, it is that Mr. Childs, the father, and Mr. Childs, the son, never rendered services sufficient to entitle them to the pay which you promised them?

A. That is in part my defence, in the present stage of it. My original defence was a demurrer against the validity of any such claim in court. Now, having to answer to the merits of the case, this is my defence.

144 Q. Do you think that their services had anything whatever to do with the passage of the bill?

A. I do, to some extent.

Q. You have availed yourself of the passage of the bill to draw the money awarded you?

A. Yes, sir.

Q. If it is an immoral thing, and contrary to good policy to appear before a committee of Congress, or before a member of Congress, and urge the passage of an act for the relief of a private citizen, is it not equally contrary to good policy and good morals for that private person to take advantage of that act and draw the money that is paid upon it?

A. That is a question of casuistry that I shall not enter upon. I can answer in regard to that, too, that I believe that the case would have gone much better, more promptly in my favor, if I had never engaged him.

145 Q. Was it not in your power at any time during the life of Mr. Childs, the father, to dissever your connection with him in this matter?

A. I do not know whether it was in my power or not. It did not suit my feelings; having consented to accept the services of the man, it did not comport with my feelings, as every body acquainted with me well knows, to discharge a man because I was dissatisfied with him. I got along as well as I could. I was very sorry from our first interview that I had engaged his services, for although I liked the man, I thought he was a very inefficient agent. That is the impression he made on my mind.

Q. I understand you, then, to admit that though you thought this man an inefficient man, you allowed him to go on in charge of your case.
As you yourself say, partly through his instrumentality the money
146 was obtained, and then bring up against his executor the charge
of inefficiency, and refused to pay him according to your contract?

A. The case must speak for itself.

Q. You referred to a correspondence between yourself and the First Comptroller of the Treasury. If you have those letters, I wish you would file them.

A. I will.

Q. Do you know anything further touching the matter in controversy?

A. I do not know anything which now occurs to me as important to convey a true idea of the case.

N. P. TRIST.

Sworn and subscribed to before me this 30th day of January, A. D. 1873.

JA'S O. CLEPHANE,
U. S. Com'r.

147 *Cause set for hearing Feb'y* 19, 1873.

L. M. CHILD
vs. } 2365. Equity docket 11.
N. P. TRIST.

Clerk will please put down the cause for trial at the next term, Feb'y 19, 1873.

THOMAS J. DURANT,
Of Counsel for Defendant.

Cause set for hearing as directed and placed on March, 1873, special term calendar.
By the clerk.

Cause certified to gen. term, Mar. 11, 1873.

In the supreme court of the Dist. of Columbia, the 11th day of March, 1873.

L. M. CHILD
vs. } 2365. Eq. docket 11.
N. P. TRIST.

It is hereby, upon the application of counsel for plaintiff and defendant, ordered that this case be, and it hereby is, certified to the court in general term, to be heard there in the first instance upon the bill, answer, exhibits, and testimony.
By the court.

A. WYLIE.

148 MONDAY, *April* 21, 1873.

Proceedings before the supreme court of the District of Columbia, in general term, commencing on the 3d Monday, 21st day of April, 1873. Present, Justices Olin, Wylie, Humphreys, and Mac Arthur.

THURSDAY, *May* 1*st*, 1873.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Justices Olin, Wylie, Humphreys, and Mac Arthur.

In the supreme court of the District of Columbia. In general term, the 1st day of May, 1873.

LINUS M. CHILD
vs. } 2365. Equity docket 11.
NICHOLAS P. TRIST.

149 This cause came on to be heard at this term, and thereupon, upon consideration thereof—

It is ordered, adjudged, and decreed—

1st. That the defendant, within ten days from the date hereof, pay to the plaintiff or his solicitor of record, the sum of three thousand six hundred and thirty-nine $\frac{97}{100}$ dollars, ($3,639.97,) with interest thereon from the 20th day of April, 1871.

2d. That until this sum be paid the defendant be, and he hereby is, enjoined and restrained from receiving from the Treasury of the United States any of the moneys appropriated to him by the act of Congress, approved April 20th, 1871.

3d. And that he pay the costs of this cause.

Whereupon the defendant, N. P. Trist, by his counsel, Thomas J. Durant, moved in open court for an appeal from said decree to the Supreme Court of the United States, at its next term; which appeal was allowed accordingly.
By the court.

150 In the supreme court of the District of Columbia, the 3d day of May, 1873.

Linus M. Child
vs.
Nicholas P. Trist.
} No. 2365. In equity.

Know all men by these presents that we, Nicholas P. Trist, the above-named defendant, as principal, and John W. Burke, & Jourdan W. Maury, as surety, are bound unto the above-named Linus M. Child, his heirs, executors, administrators, and assigns, in the sum of seven thousand dollars, ($7,000,) to be paid to the said Linus M. Child, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this third day of May, 1873.

Whereas the above named Nicholas P. Trist hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Nicholas P. Trist shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

N. P. TRIST. [L. S.]
JOHN W. BURKE. [L. S.]
JORDAN W. MAURY. [L. S.]

Sealed and delivered in presence of—
R. J. Meigs, *Clerk.*

Approved May 3d, 1873.

D. K. CARTTER,
Chief Justice.

151 District of Columbia, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing 150 pages of writing are truly copied from the originals on file and of record in the clerk's office of said court, and that said originals constitute the entire record in a cause pending and lately decided in said court, entitled Linus M. Child *vs.* Nicholas P. Trist. No. 2365. Equity docket 11.

Witness my hand and the seal of said court, this 17th day of September, A. D. 1873.

[SEAL.]

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Assistant Clerk.

(Indorsement on cover:) No. 484. Nicholas P. Trist, appellant, vs. Linus M. Child. Dist. of Columbia sup. court. Filed 27th September, 1873.

○

In the Supreme Court of the United States.

October Term, 1874.

NICHOLAS P. TRIST,
Appellant,
v.
LINUS M. CHILD.
No. 195.

On Appeal from Supreme Court of the District of Columbia.

Brief for Trist's Executor.

N. P. Trist obtained from Congress an act for his relief for $\$14,550\frac{90}{100}$, April 20, 1871.

17 S. L., 3 Chap., 35.

Five days afterwards Linus M. Child, acting for himself and as his father's executor, filed his complaint, claiming compensation for preparing, presenting, and prosecuting Trist's claim before "the committees and members of the "two Houses of Congress." He shows that the money awarded Trist is still in the United States Treasury, and that he has a lien upon it. The prayer of his petition is to enjoin Trist from withdrawing said money from the

Treasury, for a decree against Trist for $5,000, and general relief.

Record, p. 1, *et seq.*

The injunction issued as prayed for, and soon after Trist appeared and demurred to the bill.

Rec., p. 5.

The demurrer was sustained, and the bill dismissed. Plaintiff then appealed to the court *in banc*, where the judgment sustaining the demurrer was reversed.

Rec., pp. 5, 6, 7, and 8.

Trist then answered to the merits, (page 8, *et seq.*,) to which there was a replication, followed by a trial and decree for plaintiff against defendant for $\$3,639\frac{97}{100}$, with interest from April 20, 1871, and until payment Trist be enjoined "from receiving any of the moneys appropriated to him "by the act of Congress, approved April 20, 1871," and costs. From this decree (page 42) Trist appealed, and having died during its pendency, his executor has been made party.

The questions involved are set forth in the following

ASSIGNMENTS OF ERROR.

I. The court erred in overruling the demurrer to the bill.

II. And in recognizing the alleged lien of plaintiff in the interlocutory judgment granting the injunction, and in the final judgment perpetuating it, when there was no lien, either legal or equitable.

III. And in enforcing an alleged assignment of a claim on the United States, made before award and forbidden by law.

IV. The relief of the plaintiff, if any, belongs to law and not to equity; and the court below was without jurisdiction.

V. The agreement, if any, was *purely personal* with Linus Child, and ceased on his death.

ARGUMENT.

I. The demurrer should have been sustained. The plaintiff, in his two-fold capacity as individual and executor, sues, not for services rendered as attorney-at-law to *Trist*, but for services in procuring certain legislation from Congress; not for professional services as an attorney to prosecute a (disputed) claim against the United States, but for a compensation, contingent upon success, and which is *a portion of the thing claimed*, for preparing, presenting, and prosecuting a claim before the Congress of the United States.

Such an action is *contra bonos mores*, and is not helped by the averment that the services were "*open and honorable*," and "*in no manner nor respect clandestine or improper*."

Marshall *v.* Baltimore R. R., 16 Howard, 314.
Tool Co. *v.* Norris, 2 Wall., 54.
Harris *v.* Roof, 10 Barbour, 489.

The action is also forbidden by the statutes which are hereafter referred to.

II. As to the lien, the lower court recognized the right of petitioner to detain the *whole amount awarded* until his claim was paid, at the inception of the suit, by the injunction or restraining order; and by the very terms of the final judgment.

And though the whole of the award coming to appellant is still in the Treasury of the United States, according to the language of the judgment, yet the court makes the defendant pay interest on the amount alleged to be due the *Childs* from April 20, 1871. By its decree, *Trist* is enjoined from receiving "*any of the moneys*" awarded to him by the United States for his own services until the claim, with interest, of the Childs be paid. "This lien "may be a common-law equity, but it is an equity that "has been abjured by this court. I, for one, abjure it "most distinctly, and say that the lien of no solicitor of "this court can or ought to interfere in ordinary cases with "the rights of the parties."

Vice-Chancellor Malins, Bank of Hindustan, L. R., ch. 7, *126, note I.

The later opinions *at law* show distinctly the same thing. "Although we *talk* of an attorney having a lien upon a "judgment, it is in fact only a claim or right to ask for the "intervention of the court for his protection, when, having obtained judgment for his client, he finds there is a "probability of the client depriving him of his costs."

Cockburn, C. J.: Mercer *v.* Graves, L. R. 7, Que. B., 503.

"Saying an attorney has a lien is only metaphorical, "and the words 'equitable lien' are INTENSELY UNDEFINED."

Erle, J.: Brunsdon *v.* Allard, 2 E. & E., 19 vol., 105, C. L. R.

These petitioners, the defendant avers, were without any lien, or any privilege, or any right of detention, or any *jus ad rem*, or *jus in re*, and the burden of proof was upon them. They have not shown it. And all this is dependent on the hypothesis that their cause of action is good, and that *legal* relations existed between them and the defendant.

III & IV. Another objection results from the Statutes of July 29, 1846, and February 26, 1853.

9 S. L., 41; 10 S. L., 170.

After quoting from the second section of the latter act, the learned judge who first passed upon the demurrer, said: "It is clear to my mind that the contract sued upon "in this case falls within the inhibition of this law. It is "not for the court to controvert the policy of this act, or to "seek by subtle interpretation to emasculate it of its "plain provisions."

And the court in bank, when reversing his judgment, declared that these acts of Congress did not apply to the case, and that the agreement in the petition was a contract for pay, contingent upon success, and not in any manner void or contrary to public policy, but simply *a measure of compensation;* that in it there was "no element of an assign- "ment, and it cannot be made one except by overlooking "its meaning and purport."

See Child *v.* Trist, 1 Wash. Law Rep., 1.

Child seems to stand in a dilemma. If the acts of Congress just referred to do not apply to his case, then the demurrer on this ground was properly overruled; but in that event his suit fails, because, without these acts of Congress, he has no lien, privilege, or right of any kind which will warrant his application for relief to equity and a resort to the writ of injunction; in other words, he could proceed at law. For the cases involving similar principles show that in contracts for securing pensions, bounties, and things of a like nature, [*special legislation not yet included*,] the only remedy is in an action upon the contract; and then the *certificate* [or evidence of the pension, &c.,] would only show that it had been obtained, and to furnish the measure of damages. Then the attorney or lobby-member is neither an assignee nor transferree; he is without interest in the thing called the pension; *he is a mere creditor, not an owner.*

Jenkins *v.* Hooker, 19 Barb., 435.
Painter *v.* Dunn, 40 Penn'a, 467.

This doctrine, if true, is utterly destructive of all right to an appeal to equity, or to a writ of injunction.

The act of April 20, 1871, (17 S. L., p. 3, chap. 35,) requires the amount to be paid to Nicholas P. Trist, and to him alone; to enjoin him from taking it is to defeat the law. And as the allowance is for his salary and emoluments as an officer of the United States, as appears on the face of the above recited act, it is contrary to public policy that any court should interfere with the payment to him.

On the fifth assignment we observe that the agreement of defendant was with Child, the father, alone, as the letter of December 16, 1869, from Trist to Child, shows; it was not with his firm, which, as the headings of the letters show, as well as the deposition of Child, the son, consisted of two other persons besides Child, the father, namely: Child, the son, and Mr. Power.

Such a contract is terminated by the death of the party.

The permission to Child, the son, to assist his father during his lifetime, did not make the former interested in the contract so far as defendant is concerned. And his services after the death of his father did not entitle him to other compensation, if any, than a *quantum meruit*; and this rule must govern the services of both father and son.

The allegations of the bill in 5th article are not supported by the proofs, and are denied by the answer. And so with regard to the 6th article, in reference to the employment of both counsellors.

And the allegations of the 9th article of the bill are denied and not proved.

The facts stated in the answer, and responsive to the bill, have not been disproved, and are therefore to be taken as the facts of the case. They show that it was Linus Child, the father, and with him alone, that defendant made an agreement for a compensation of twenty-five per centum; that no such agreement was made with the son; that their travelling expenses must have been very small, as they had free railroad passes; that the services performed by the son were slight, and of but little value; and that he admitted his inadequacy by the suggestion he made of employing the additional aid of Mr. Gooch. Of the value of his services no proof whatever has been given.

We pray your Honors to reverse the decree and dismiss the bill.

Respectfully submitted.

DURANT & HORNOR,
Attorneys for N. P. Trist's Executor.

WASHINGTON, D. C., *January* 25, 1875.

Supreme Court of the United States.

OCTOBER TERM, 1874.

N. P. TRIST, Appellant,
vs.
L. M. CHILD.
No. 195.

BRIEF FOR LINUS M. CHILD, APPELLEE.

B. F. BUTLER,
R. D. MUSSEY,
For Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1874.

N. P. TRIST, Appellant,
vs.
L. M. CHILD.
No. 195.

BRIEF FOR LINUS M. CHILD, APPELLEE.

Statement of Facts.

In the year 1848 Nicholas P. Trist (whose legal representative appears here as the appellant) negotiated, as he claims, the treaty of Gaudalupe-Hidalgo between the United States and Mexico. It is not necessary to refer to the history of that treaty further than to say that the United States Government repudiated Mr. Trist and ratified the treaty. For his services in this matter, Mr. Trist was, for a long time, without what he regarded as adequate remuneration; constrained, according to his story, by pride, he refused to make application to Congress for the pay which he deemed his due; feeling that it was the duty of the Government to take the initiative in doing him justice.

Mr. Trist accordingly did nothing with his "claim" for twenty years until a stronger constraint than pride viz. necessity, led him to apply to Congress for relief. The result of some consultation and a correspondence had concerning this measure was that he retained Linus Child of Boston then the head of the legal firm of Child & Son, to prepare present and prosecute his claim; stipulating with him to give him as compensation for his professional service one-fourth part of whatever might be awarded to him by Congress. Mr. Trist being then so sick and lame that he could not attend to the work himself.

The testimony shows that Mr. Child executed his part of this contract with distinguished fidelity and ability. He prepared the memorial, he collected the facts, he marshalled the arguments, he presented the claim, or caused it to be presented, to Congress and urged in a professional and legitimate manner its passage before the proper committee and by the open and avowed advocacy of it as an attorney of the claimant before individual members of Congress: a labor Mr. Trist by his age was disabled from doing. Before the claim was allowed and the resolution for relief passed, Mr. Linus. Child died.

His son Linus M. Child, the appellee here, as the surviving partner of Linus Child & Son, as his father's successor in business and as the executor of his estate continued the prosecution of the claim, in the preparation of which he had assisted, and with the facts of which he was familiar.

It is in evidence that he visited Washington and in a professional and legitimate manner urged the passage of this claim. It is also in evidence that Mr. Trist accepted his services and allowed him to continue the work which during Linus Child's lifetime had been chiefly performed by him.

On the 20th of April, 1871, a resolution of Congress granting Mr. Trist $14,559.90 in satisfaction of this claim was approved by the President.

Mr. Linus M. Child came to Washington and thence went to Alexandria to procure a settlement with Mr. Trist. The record shows the senile discourtesy with which he was treated. Unable to make an amicable arrangement with

Mr. Trist, Mr. Child filed in the Supreme Court of the District of Columbia the Bill in Equity which is the foundation of this suit.

Mr. Trist appeared and demurred. Mr. Justice Wylie sustained the demurrer. Mr. Child appealed to the court in Banc which reversed the decree at Special term. Testimony was taken and the case was heard on its merits in the General Term in first instance; a decree was made in Child's favor and Trist appealed.

In the Court below the counsel for Mr. Trist made these points.

1st. The employment of Linus Child was a personal one not surviving to his son.

2d. The contract sued upon is in violation of the act of 1853 prohibiting the assignment of claims against the United States before their allowance.

3d. The employment was one to procure legislation upon a contingent compensation and therefore *contra bonos mores* and not to be enforced.

I. *The nature of the employment.*

Upon this subject we have the direct testimony of Mr. Child and Mr. Trist and what may be called the independent testimony of certain letters papers &c. in the case.

Mr. Child testifies (R. p. 23*) that his father and he were "law partners" and after a few preliminaries he says:

> "Afterwards my father went to Washington and saw Mr. Trist and made arrangements there that I myself should meet him, and I did meet him afterwards in Washington, and performed certain labor for Mr. Trist, in this case, at Mr. Trist's request made to me, personally, by Mr. Trist. And it was agreed by Mr. Trist and myself that I should do some things in regard to the case, and my father should do others; and from that time till the final issue of the case, we, my father and myself, did work together, and after the death of my father, I continued to manage the case with Mr. Trist's knowledge and consent, and at his

---

* References to Record are designated by R. and the printed page is referred to.

request went to Washington and attended to his case there as the circumstances required, until the bill was passed through Congress.

I was partner with my father at this period, when the original agreement was made, and had my share in all cases in which he was employed, and rendered such assistance in all such cases as I was able, all of which Mr. Trist well knew and accepted and required. He used my services very freely during the whole case. It ended when we got the bill through Congress, and the first specific work I did was to spend considerable time with Mr. Trist at Washington, and afterwards in preparing in Boston, by myself an elaborate statement of the facts of the case, together with an argument which was given to Mr. Sumner to be presented to the Committee on Foreign Affairs."

Also (R. p. 25.) "During the whole time the case was pending my father and myself devoted a great deal of attention to it, did every thing in our power to forward and prosecute the case, and previous to the passage of the act, Mr. Trist not only never found any fault, but, on the contrary, frequently expressed himself satisfied with the case as it progressed, never intimated in any way but that the case was thoroughly understood, and agreed that the statement of the same prepared by me for presentation to the Committee on Foreign Affairs should be used in preference to one that he had himself prepared."

Mr. Trist's testimony is equally explicit. Complaining about an argument prepared by the younger Mr. Child, he says (R. p. 36.)

"It was not the thing at all, that suited my views, but I saw the case was in the hands of himself and his father and I let it go."

Again—he quotes a remark made to his wife by him, after the death of the father (R. p. 37.)

"No; as I have allowed his son to become connected with the business, it would be unfair for me to consider the connection at an end by the death of the father."

Indeed the whole of Mr. Trist's prolix testimony in his own behalf shows that he was about equally connected with both father and son and this remark to his wife taken in connection with the letters that figure as Exhibits to his and the complainant's testimony (R. pp. 18–19–20–27 & 28) show conclusively that what the father began was continued and ended by the son; and that it was never disputed by Mr. Trist until after the resolution was passed that the Claimant was associated professionally with his father in the prosecution of this claim.

When a person employs the Senior member of a legal firm to prosecute a claim for him against the United States Government and corresponds with and accepts the services of a Junior member of the firm in and about the preparation and presentation of a case; and after the death of the Senior member allows the Junior to continue the prosecution of the claim, accepts his services in that regard and in fact distinctly says that as he has—

> "allowed him to become connected with the business it would not be fair to consider the connection at an end by the death of the senior—"

it would be contrary at once to equity, natural justice and the common sense of mankind sustain a plea that the original employment was of such an intensely personal character as to determine at the death of the Senior member of a firm whose Junior member had thereupon prosecuted the case to a successful termination.

II. The contract sued upon is in violation of the Act of 1853, *prohibiting the assignment of claims against the United States before their allowance.*

The Act of 26 February, 1853, referred to (10 Statutes 170) seems to be an amendment of and an enlargement of the act of 29 July, 1846. (9 Stat. 41.) (See Revised Statutes, Section 3477, for the law in its present form.)

That portion of the Act relied upon by counsel for Trist is found in the first section and is as follows:

> "All transfers and assignments hereafter made of any claim upon the United States; or any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor * * * * shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attested witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof."

This Statute does not apply here at all. There is here no transfer or assignment of any claim upon the United States.

Mr. Child does not claim to own "any portion" of this claim; to have had any portion of it transferred to him or to have had any "interest" in it transferred to him.

Assignment carries with it proprietorship and the rights thereof, none of which did Mr. Child the father, nor does Mr. Child the son, pretend ever to have had, exercised or asserted.

The letter of December 16, 1869, making the contract does not assign nor transfer to Mr. Linus Child any part of Mr. Trist's claim againt the United States; it does not put Mr. Child in a position to say to Mr. Trist "You and I are henceforth joint owners of this claim, you owning three-fourths and I owning one-fourth;" it does not make over to Mr. Child any "interest" in the claim, divided or undivided; it does not give him any right to dictate the method in which the claim shall be prosecuted; it does not substitute, wholly or partially, Mr. Child for Mr. Trist in the control and management of the case; it does not make him a partner with an equal, or proportionate, control over the subject matter of the claim; it employs him to act *for* Mr. Trist and not *with* Mr. Trist in the presentation and prosecution of this claim. And the whole history of the case thereafter is in accord with this view. Nowhere does Mr. Trist treat Mr.

Child the father, or Mr. Child the son, as the joint owner with him of this claim; nowhere does Mr. Child the father, or Mr. Child, the son, assume to act as such; but everywhere and under all circumstances they hold themselves out to be his Attorneys, and not his Associates, in the prosecution of this claim.

Authority concurs with logic in treating this kind of a contract as not an assignment or transfer of the claim referred to but as a contract in which the claim is alluded to only: (1.) to show in respect of what the services are to be rendered; and (2.) to determine a measure of compensation.

A Court of high repute, through a Judge, the soundness of whose judgment his present associates upon your Bench, no less than the Bar of this Court, respect, has passed upon almost identically the question raised here.

See *Painter* vs. *Drum* 40 Penna. 467.

Several points were presented in this case—among others the validity of a contract made by a son to procure a pension for his father upon a contingent fee of one half of the amount recovered.

So much of the opinion as states, discusses and decides this point is subjoined.

> STRONG, J.—The first question raised by this record is, whether the contract between Simon Drum and his father, for the breach of which the judgment was recovered, was a void contract, in consequence of the provisions of the act of Congress of June 7, 1832.
>
> That act was one confirming pensions, and it contains the provision "that the pay thereby allowed shall not be in any way transferable, or liable to attachment, levy, or seizure by any legal process whatever, but shall enure wholly to the personal benefit of the officer, soldier," &c. It may be conjectured that Congress proposed to secure two objects by this provision; first, relief of the pension department from any obligation to any other than the pensioner personally; and, secondly, putting the bounty of the government into the hands, and under the disposition of the person for whose benefit it was intended. The

contract proved in this case was, in substance, that Simon Drum should procure the pension certificate for his father, in consideration whereof the father promised to give him one-half. The question now is, whether such a contract was prohibited by the Act of Congress, not whether it was conscionable. Now it is clear that unless it can be made out that it was either in law or equity a transfer of the pension, it cannot be maintained that it was prohibited. Obviously it was no legal transfer. It did not purport to be. When it was made, the pension had not been granted, the certificate had not been issued. Nor was the contract in terms an executory contract, to assign the pension, or any part of it, after it had been granted. The pension was referred to only as a measure of compensation for the service rendered in obtaining it. The title was left in the pensioner, and if he did not pay the stipulated price for procuring it, the only remedy of Simon Drum was an action upon the contract, in which the certificate would be only evidence to show that it had been obtained, and to furnish the measure of damages. The contract was not, therefore, a transfer of the pension prohibited by the act of Congress. Such has been the construction given to the act in the courts of New York: Jenkins v. Hooker, 19 Barb. 435. There an instrument of writing was held valid and enforced, by which Hooker, after reciting that he was entitled to an addition to his pension, under the act of June 7, 1832, and that Jenkins had undertaken at his request to prosecute his claim to the increased pension, promised in consideration thereof that in case Jenkins should obtain the increase he would give him one-third. It was ruled that this did not amount to an assignment either legal or equitable; that Jenkins was a mere creditor of Hooker, not an owner of the pension.

The immunity conferred upon the Pension by the Act of Congress could not be greater. It is in no way transferable nor liable to attachment, levy or seizure by any legal process whatever; it is to enure wholly to the personal benefit of the pensioner. It is submitted that the act of 1853 which opposing Counsel claim denounces the contract between Trist and Child has no larger effect than the act construed by Mr. Justice Strong, (except that the Act of 1853 applied to all claims and the Pension Act applies only to Pensions.) Indeed it does not go so far. Any other claim against the United States, reduced to money, becomes at once like other personal property of the possessor, liable to attachment, seizure &c., &c. But pension-money may not be touched by the law in any way.

So that while the proceeds of an ordinary claim against the United States may, in a Debtor's hands, be forced to contribute to the satisfaction of his debts, the yield of a Pension claim cannot be.

The court in *Drum vs. Painter* held that the contract under which the son claimed was not inhibited by the Statute of 1832. Unless the court's reasoning in that case is utterly fallacious it must be held that the contract between Child and Trist was not in violation of the statute above cited.

It is not necessary to discuss the expediency wisdom or constitutionality of the Section cited.

Yet we cannot let it pass without recording our opinion formed upon an extensive observation of its practical working that it is unjust and unwise. Nor can we assent, without at least hesitation, to the theory that the Congress of the United States has the Constitutional right, except within the District and Territories where it has exclusive legislative control, to interfere as to the sale, transfer &c. of *choses in action.* It may perhaps say that it will only recognize and treat with the original owners of a *chose in action;* but that original owner may not when permitted by the laws of his own State, transfer or assign it, is a doctrine we would admit only after the most careful and deliberate consideration.

III. The employment was one to procure legislation upon a contingent compensation and therefore contra bonos mores and not to be enforced.

The Counsel upon the other side contends that the consideration of the contract between Child and Trist was illegal, and that no action will lie to enforce it, and rely upon the authority of the case, reported in 16th Howard, p. 314, of *Marshall vs. the Baltimore & Ohio Rail Road Company.*

The syllabus of the case as given by Judge Curtis in his digested reports sustains their view. But, with deference to the reporter and to the opposing Counsel, the report does not sustain the syllabus.

To make the syllabus consistent with the facts of the case and the decision of the Court, it should read—

> "All contracts for a contingent compensation for obtaining legislation *by using* personal or any secret or sinister influence on legislators, are void."

It is a well known canon of judicial interpretation that

> "an expression of an opinion, however deliberate, upon a question however fully argued, if not essential to the disposition that was made of the case, may be regarded as a dictum." (Bowier's Dictionary *sub verbo* dictum.)

In the case in Howard it was not necessary for the Court to consider the effect of contingency in compensation for parliamentary practice when that practice was honorable, fair and open, and by an Attorney.

A more disgraceful controversy than the one between Marshall and the Rail Road Company it is hard to conceive. It merits all that was said in reprehension of it by Mr. Justice Grier; and the vigorous language in which Mr. Justice Daniel recorded his disgust is worthy of repetition. That eminent jurist prefaced his opinion upon the want of jurisdiction in the United States Courts over causes in which corporations were parties, with these remarks:

> "In the settlement of the discreditable controversy between the parties to this cause, I take no part. If I did I should probably say that it is a case without merits, either in the plaintiff or in the defendants, and that in such a case they

should be dismissed by courts of justice to settle their dispute by some standard which is cognate to the transaction in which they have been engaged."

The facts of the case are that Mr. Marshall entered into a contract with the Baltimore and Ohio Rail Road Company, to obtain certain favorable legislation in Virginia for the contingent compensation of *fifty thousand dollars* by the use of personal, secret and sinister influences upon the legislators. He expressly stated that his plan required "absolute secrecy" and "that he could allege 'an ostensible reason' for his presence in Richmond and his active interference without disclosing his real character and object." He spoke of using "out-door influence" to affect the legislators through their "kind and social dispositions," and pictured them as "careless and good-natured," "engaged in idle pleasures," capable of being "moulded like wax" by the most "pressing influences."

The Company authorized him to use these means; but notwithstanding his efforts he failed to accomplish the purpose for which he was employed. He received some six hundred dollars from the Company for disbursements and expenses and admitted his defeat.

Subsequently, however, a compromise was effected between the friends of the Road and its opponents, which the Company accepted; whereupon Marshall demanded his fifty thousand dollars which demand was refused. He then brought suit to recover it.

Thereupon the company pleaded not only their settlement with him and his failure to do that for which he was employed but also that the contract which they had made was an "agreement contrary to the policy of the law and which could not be sustained."

Thus the precise question was raised whether a contract for contingent compensation for obtaining legislation by the use of secret sinister and personal influences upon legislators was or was not contrary to the policy of the law.

The decision of that question was the decision of the case.

It was not necessary to go into any discussion of the propriety or impropriety of contracting for a contingent compensation for obtaining favorable legislation by the employment of proper and honorable influences—arguments, that is, addressed to men's reasons and not inducements held out to their appetites their passions and their vices.

The case of an attorney pleading the cause of his client was not before the court. They were dealing with a dishonorable and corrupt solicitation, and they held that for the recovery of fees earned in such service the courts of the United States were not the proper tribunals. And in such a case no distinction need be made between a contingent and a direct fee.

Whatever was said about a case, not before the court, and on a question not presented by the record is entitled to respect as a dictum but not to obedience as an adjudication.

The case now at Bar differs from that of Marshall *toto cœlo*. Child was a Lawyer, and employed as such to do the work of a Lawyer, to prepare a Memorial, to collect facts and address arguments in behalf of a man too sick to do it himself. Both father and son were openly and avowedly Attorneys for their client Trist — they never presented themselves to anybody in any different or other respect; every act of theirs was fair, honorable and open. It does not appear that Marshall ever was or claimed to be an Attorney; he certainly did not do the work of a lawyer in this particular case;—he prepared no memorials—he collated no facts—he addressed no arguments (as a lawyer understands that term) and he entirely failed in what he undertook.

Until it can be shown that Trist and Child agreed with each other that Child was to preserve "absolute secrecy" about the nature of his employment; that he was to hold out a false but "ostensible reason" for his presence in Washington and his active interference in Trist's behalf without disclosing his real character and object; that he was to "mould like wax" by the most "pressing influences" "careless and good-natured" legislators "engaged in idle pleasures;"—until all this can be shown the case of Marshall cannot be cited as a precedent for the determination of that of Trist.

In Marshall's case, plaintiff and defendant combined together to perpetrate a fraud upon the servants of the public engaged in legislating for the public good—and it is this fact (it is respectfully submitted) which makes the contract infamous and disgraceful and incapable of enforcement in the courts; not that the compensation was contingent; not that the action sought was that of a Legislature.

The very opinion of Mr. Justice Grier says, (pp. 334–5)

> All persons whose interests may in any way be affected by any public or private act of the Legislature have an undoubted right to urge their claims and arguments, either in person or by counsel professing to act for them, before legislative committees, as well as in courts of justice.

——subject only, as the Opinion proceeds to show, to the rule that Counsel should appear as such, not as disinterested and unconcerned parties.

In *Hunt v. Test*, 8 Ala. 713, the Court say that Acts of Congress confirming incomplete land titles are in effect judicial decisions and that it appears to it, that

> "the opportunity for a correct decision would be much greater, after all had been said in favor of each claim by those interested in making the most of it, than if Congress had been obliged to work out the problem unaided by the ingenuity of interested Counsel, and such appears to be the course pursued at Washington as well as at London in such cases."

There are many cases besides those of land claims where the Action of Congress is in the nature of a judicial finding. This at Bar is one of them. Trist sued, so to speak, for labor done and and upon a *quantum meruit.*

Reference is made to the practice in London. What is called the Parliamentary Bar is a product of Railways. When Rail-Way Companies began to be formed in England the applications of their "promoters" for Charters were presented before the appropriate committees of Parliament by gentlemen "learned in the Law."

This Parliamentary practice, at first looked upon as somewhat outside the general scope of the profession, has come to be recognized as one of the surest avenues to professional reputation and to income. Such names as Mr. Hope Scott, Mr. Webster, Mr. Karslake, Mr. Merewether, Mr. Wrangham, Mr. Malcolm Kerr, Mr. Denison, Mr. Maule, Mr. Power, Mr. C. E. Pollock, Mr. Russell Gurney, Mr. Vernon Harcourt, and Mr. Coleridge appear in the Parliamentary returns as opposing or promoting various Rail Road measures, between the years 1852 and '62.

Subdivision of labor which, in England, is carried so far as to become cumbersome, prevails in Parliamentary practice; not only is there the Counsel whose function it is to make arguments and examine witnesses; not only is there the Solicitor who is to the Parliamentary counsel what the Attorney is to the Barrister; but there is also the Parliamentary Agent whose duties are of a peculiar character. He is to see that the various fees demanded by the two Houses at each stage of the measure, are paid; that notices, &c., are properly served; and that, in short, the necessary Parliamentary steps are taken at the proper time.

In England no private bill can even be presented without the payment of a fee; and at every subsequent step of the process until the bill receives the royal assent there is to be paid a fee; nay, more—and these fees are to be increased upon the petition, first, second and third readings and report, at a sliding ratio proportioned to the amount of money involved. The result is that the Parliamentary fees on a private bill will run from £150 upwards.

During the ten years from 1853 to 1862 inclusive, the entire amount of fees received at the House of Commons on account of private bills was £541,489 14s 4d and the entire amount, during the same period of the "Salaries and charges of the House of Commons establishment" was £591,605 19s. So So that the expenses of the House of Commons during the period referred to were, with the exception of about £5,000 a year, defrayed by the fees attached to private legislation. An experienced Parliamentary Agent estimates the average professional charges by Parliamentary Agents at £230 or £240 per bill, and the average of the House-fees at £360 per bill. This is entirely exclusive of Counsel-fees and Solicitors charges, and those, and the expenses of a private bill cannot fall much, if any, below Four Thousand Dollars.

This, your honors will bear in mind is cash paid down.*

A poor man cannot afford in England to apply to Parliament for relief; as only the rich can sit upon its benches, so only the rich can come before it as suppliants.

May the day be long absent when the wronged citizen of the United States cannot obtain justice from Congress except upon the payment of one-half the yearly salary of a cabinet minister!

Why is it that there is in England this practical denial of relief to a poor man?

It is because, may it please your honors, the English Counsel can maintain no action whatever for his fees; it is because he never moves for his client except upon the payment of money. Why is it that in America the poorest man who has a claim against the United States may urge that claim through able counsel before the appropriate committees of Congress?

It is because, may it please your honors, the American lawyer undertakes cases upon contingencies.

In Paschal's case (10 Wallace 483) Mr. Justice Bradley delivering the opinion of this court says:

---

* See appendix A.

> "In this country, the distinction between attorney or solicitor and counsel is practically abolished in nearly all the States. The lawyer in charge of a case acts both as solicitor and counsel. His services in the one capacity and the other cannot be well distinguished. And, as a general rule, counsel fees, as well as those of attorney or solicitor, constitute a legal demand for which an action will lie. And whilst, as between party and party in a cause, the statutory fee bill fixes the amount of costs to be recovered, as between attorney or solicitor and client a different rule obtains. * * * * * *
>
> The fee bill adopted by Congress in 1853 recognizes this general rule and, in fact, adopts it. By the first section of that act it is expressly declared, that nothing therein shall be construed to prohibit attorneys, solicitors, and proctors from charging to, and receiving from, their clients, other than the government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective States, or may be agreed upon between the parties."

Is there anything immoral in client and attorney agreeing that the compensation of the latter shall be contingent upon success? Is there anything contrary to public policy in it? It is universal. There is not a lawyer in the land, certainly not one who has a practice, that does not labor for contingent fees.

The entire practice in the Court of Claims is conducted upon contingent compensation, and the great bulk of the practice in all Courts contemplates a larger recompense in case of success than that of defeat.

Is there anything immoral in a Lawyer appearing before a Committee of Congress or endeavoring to obtain legislation by appropriate means?

Mr. Justice Grier in the opinion upon which the other side rely, says there is not, certainly he ought to be good authority as against them.

> "All persons have an undoubted right to urge their claims by counsel before legislative committees."

Every one will admit that there has always been a high standard of professional honor in the English Bar, and the names cited above are sufficient guarantee that the English Bar does not admit that parliamentary practice is derogatory to its own honor or the interests of the public.

If there is nothing immoral in Counsel's taking a contingent compensation or in appearing before a Legislative Committee in behalf of a Client's interest, how can it be that the combination of these two proper things makes something immoral unsound and impolitic?

It is said

> "Bribes in the shape of high contingent compensation must necessarily lead to the improper use of means and the exercise of undue influence."

"*Bribes*" are usually addressed to the party whose action is desired and not to the party who asks for the action.

The duty of an Advocate is to insure his client's success (of course by honorable means) and his client can not with any propriety of language be said to bribe him by the offer of any compensation (contingent or otherwise) however large. Of course it is improper and immoral to bribe a legislator by the offer of contingent compensation to him, and if that is what is meant by Mr. Justice Grier's sentence, no fault can be found with it. If it be meant however to assert that the offer of large contingent compensation to Lawyers necessarily leads them to use improper means to achieve success, we repel the proposition as untrue in point of fact and a calumny upon a profession that has furnished as many examples of high honor as any other.

Take this very case. His tongue would wither at its root who, knowing Linus Child, should say that he was corrupted by the compensation that Trist offered him.

An assured compensation and a very small one at that will lead a pettifogger to use, if he can, improper means and exercise, if he can, improper authority, but no compensation, contingent or otherwise however large will lead an upright man to swerve one inch from the path of honor.

No, your honors, it is not the compensation; it is not its contingent character that makes the man go wrong—it is the man himself.

The offer of high contingent compensation may be, probably is, in some cases, an inducement to the use of improper means, but it is not *always* so nor *necessarily* so. If it be always and inevitably the result of expecting a large return that undue influences should be used, no claimant ought ever to prosecute a claim, for he is interested to the extent of the entire recovery.

He therefore is vastly more sure than his counsel, who is to receive only a part of the award, to resort to whatever demoralizing and corrupt influences he can contrive to bring about his success.

It cannot be held that this court intended or that any court ever intended to deny a claimant the right of appearing before Congress and urging his claim; or to regard it as immoral or subversive of public policy; and yet the logical result of Mr. Justice Grier's *dictum* is precisely this.

We call the attention of the Court to the distinction in the solicitation of cases before the Legislature which is well taken by the learned Court in *Mills vs. Mills*, 36 Barbour 474, viz: That all employment of solicitation for the passage of Public Laws should be held illegal and void because no one citizen can, or ought to, have more interest than another in the passage of Public Laws which are to be general in their application and to affect all citizens alike. But in the passage of Private Laws to affect private rights the very theory of them is that the individual is to have his right established or defeated by legislative action. Thus he acquires the right either by himself or by his representative, the latter especially when he is prevented by age or sickness from acting in his own behalf, to present such arguments and considerations as will induce the Legislature to adjudicate his case favorably. If he has the right to do this himself why may he not do that by his Attorney which he has the right, but not the physical ability to do himself? Is it illegal for him to make such contracts as he may deem reasonable for the compensation of the services of him who shall act in his behalf? The necessity of a trained body of men to aid Congress as the Courts are aided in the deciding upon private rights on which they have to pass has become so far demonstrated that a Bill is now pending in the Senate of the United States which provides that only lawyers or claimants themselves or persons acting for them from friendship and without pay, shall be allowed to appear before Committee of Congress.

(See Senate Bill 1180.)

We are not asking the Court here to make a decision which shall open the door to corrupt influences upon Congress; or which shall give aid and countenance to what is popularly known as "lobbying" and is properly denounced as dishonorable.

But we ask that by giving the sanction of the law to a proper and honorable advocacy by learned counsel of private rights before Legislative bodies you shall aid in doing away with the employment of Agencies which work secretly and dishonorably.

We submit that the effect of a decision of this Court which should outlaw all contracts for contingent compensation of advocacy by honorable men before a legislative body of private rights, would be to compel the use of instrumentalities and influences tending, as is universally admitted, to corruption.

There will always be solicitation before legislatures so long as legislatures have the power and exercise it of passing private laws. For the gift, or the art, of statement and persuasion is not the common property of mankind.

There always has been, and there always will be the Advocate, whose function it is to comprehend his client's case;

to group together its facts and to enforce its demands by judicious argument and apposite illustration.

It is a profession—this making of ones-self the mouth piece for another—required alike by the rudest barbarism and the highest civilization.

The more complete and varied the civilization the more important will be the office of the advocate, the more dignified his calling and the more assured his rewards.

All that men hold dear lies in the pathway of the successful advocate; honor, wealth, gratitude affection usefulness. In every tribunal; in every forum; in every assembly of whatever character where a man's rights are affected, the advocate will be in demand. It matters not whether it be before a Justice of the Peace, a Council of Arbitration, a Criminal Court, a Senate trying an Impeachment, a Legislature discussing the erection of a bridge, a Committee of Congress investigating alleged misdemeanors of its own members, or this Tribunal adjudicating between the citizen and the government; staying the Executive hand; voiding the Acts of Congress.

And so long as there is a demand for the advocate so long in this country at least will the advocate render his services for a contingent compensation.

You are asked by the appellant to decide that the advocate shall not recover such compensation if it be for service before a Legislature and by so deciding to take him away from Legislatures and leave only "lobbyists" as a resort for those who cannot plead their own cause.

Is it not better that those who appear before the legislatures of our States and the Congress of our country should be men set apart to the profession of advocacy; men trained to the contemplation of the laws; sworn to obey them; versed in their construction, familiar with their effects; aware of the method of their execution; responsible to the Courts of which they are sworn officers, not only as other citizens are responsible, but additionally responsible in respect of the very practice of their profession itself—for any infraction of the laws and further for any, the slightest, deviation from the strictest path of professional integrity and gentlemanly demeanor?

Solicitation of some sort there must be; shall it come from the mouths of such men as these and be an open honorable and upright solicitation of the intellect and the reason of the legislator or shall it be made by outlawry a secret sinister and personal solicitation of his passions his prejudices and his vices?

Shall it be CHILD or MARSHALL?

Which, think you, will tend better to conserve the purity of the legislature the professional advocate or the lobbyist?

This question is addressed to the court by this case. If you shall decide that the pledged word of his Client as to compensation avail the Congressional Practitioner nothing; if you shall hold that a man who in his poverty makes a contract may repudiate it when the fruit of the contract is attained; if you shall hold, in a word, that a lawyer may not for a contingent compensation practise before a Legislature then will you remit all work before such bodies to men devoid of honor irresponsible, either in character or property preying alike upon the misfortunes of claimants and the weaknesses of legislators.

Respectfully submitted.

B. F. BUTLER,
R. D. MUSSEY.
For Appellee.

APPENDIX A.

A statement of the English Parliamentary Practice will be found in

Riddells Railway Parliamentary Practice,
London: 1846.

See, also,

Standing Orders of the House of Commons, 1859.
List of charges for Parliamentary Agents, Attorneys, Solicitors and others, prepared by the Clerk of Parliament, 1867.

For interesting Statistics of Private Bills see
Parliamentary Acts and Papers, 1862, vol. 44.
Returns relating to Private Bills.

A large mass of valuable testimony concerning the method, cost, &c., of prosecuting Private Bills in Parliament will be found in the Parliamentary

Reports from Committees, vol. 14, 1857–8.

In this last will be found the testimony of Mr. T. Coates, who is the Parliamentary Agent referred to in the Brief.